Supreme Court, U.S.
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CASE NO:

IN THE

Supreme Court of the United States

DONALD CAMPBELL,

Petitioner,

V.

STATE OF FLORIDA DEPARTMEMT OF CORRECTIONS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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Petitioner Pro Se

65 pp

SUBJECT:

Discrimination failure to promote, Retaliation and Violation of Due Process Clause under the Fourteenth Amendment Equal protection of the law.

QUESTION PRESENTED:

1. Whether the district court and the Eleventh Circuit applied the proper standard dictated by Rule 50(b) judgment as a matter of law notwithstanding a jury's verdict in overturning and affirming a competent jury's verdict with was supported by sufficient evidence in the record? **Reeves v. Sanderson Plumbing Products, Inc., 120 S. Ct. 2097, 2102, 2109-2110 (2000)**

2. Should this court grant certiorari to resolve a conflict among the circuits as to whether a prima facie case is no longer relevant when the trier of facts has before it all the evidence needed to decide issues of whether the defendant intentionally discriminate?
U.S. Postal Service Board Of Governors v. Aikens; 103 S. Ct. 1481, 460 U.S. 715. (1983)

3. Whether the District Court and the Eleventh Circuit Court of Appeals violated plaintiff Due Process right under the Fourteenth Amendment which guarantee equal protection of the law?

DECISION:

U.S. Court of Appeals Eleventh Circuit, Filed July 30, 2002; No. 02-10691-DD; District Court Docket No. 98-6133-CV-DTKH
U.S. Court of Appeals Eleventh Circuit; Petition for Rehearing/Rehearing En Banc denied November 12, 2002; No.02-10691

PARTIES

In addition to the parties set out in the caption, this case also involved co-plaintiff, Faye Wright Simpson and Albert Hill Jr. whose cases were dismissed and/or affirmed by the Eleventh Circuit Courts Of Appeals and Writ of Certiorari denied by this court.

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NO: 03-

IN THE

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DONALD CAMPBELL,

Petitioner,

V.

STATE OF FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioner Donald Campbell respectfully pray that this Court issue a Writ of Certiorari to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit issued on July 30, 2002 and Petition for Rehearing and Petition for Rehearing En Banc denied issued on November 12, 2002.

OPINIONS BELOW

The opinion of the Eleventh Circuit is unreported NO: 02-10691 and is set out in at **App. Pp.1a-4a** of the Appendix herein. The opinions of the district court granting Defendant's Judgment as a Matter of Law Notwithstanding the Jury Verdict are unreported and are set out at **App. Pp. 4a-11a**. The District court and the Eleventh Circuit Court of Appeals also ignored evidence; Defendant's exhibit # 63 was admitted into evidence verifying that hiring authority for Positions # 01222 Correction Inspector (March 2000) and # 05440 (October 4, 2000) Correctional Senior Inspector Fred Schuknecht, Chief Inspector was aware of plaintiff's protected activity as he signed plaintiff's prior EEOC investigation upon completion by his office on August 22, 1997, which was the subject of Count I. Race Discrimination failure to promote of plaintiff suit. **App. Pp. 12a-21a** This evidence is undisputed. **Goldsmith v. City of Atmore; 996 F.2d 1163 (11th Cir. 1983).**

JURISDICTION

The decision of the Eleventh Circuit was entered on November 12, 2002. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254.

STATUES INVOLVED

This matter involves Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., which provides, in pertinent part:

42 U.S.C § 2000e-2(a). It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin……

.

42 U.S.C. § 2000e-3(a). It shall be an unlawful employment practice for an employer to discriminate against any of his employees because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testify, assisted, or participated in any manner in an investigation, proceeding, or hearingn under this subchapter.

Due Process Clause of the Fourteenth Amendment provides: "(N) or shall any State deprive any person of life, liberty or property, without due process of law"

STATEMENT OF THE CASE

1. The Course of Proceedings and Disposition in the Court Below

As case reaches this Court, it is an individual case of race discrimination and retaliation under Title VII of the Civil Rights Act of 1964 as amend. Petitioner Donald Campbell is an African-American employee of the Defendant, State of Florida Department of Corrections. Plaintiff/Petitioner

complaints alleging racial discrimination on May 1, 1997 with the E.E.O.C. The E.E.O.C. issue a Notice and Right
To Suit and Petitioner filed suit on 5/12/98 in the United States District Court for the Southern District of Florida. On 5/24/99 the district court dismissed petitioner's lawsuit for failing to file a timely EEOC charge. Petitioner appealed to the Eleventh Circuit Courts of Appeals and on May 4, 2000 the Appeals court reverse the district courts ruling and remanded the case for further proceeding. (R-176). The district court also awarded respondent fees and cost but the appeals court reversed and set aside the cost judgment. (R-174). Petitioner March 2, 2000 application position # 01222 was mention on page 26 in petitions reply to respondent motion for summary judgment filed on August 29, 2000. On September 14, 2000 Petitioner filed a complaint with the E.E.O.C. alleging retaliation as Petitioner suffered an adverse action while his suit was Pending before the district court. Petitioner amended his suit adding retaliation. A jury tried petitioner case on the merit after respondent Motion to Dismissed Which was granted and later reversed by the Eleventh Circuit Court of Appeal. The District Court also denied Respondent Motion for Summary Judgment on petitioner race Discrimination count and Respondent Motion for Limine on Petitioner retaliation prior to Trial. The jury returned a verdict on petitioner retaliation claim and awarded plaintiff $250,000.00 in lost wages and compensatory damages for pain and suffering and was Hung on petitioner race discrimination claim and the court declared a mistrial.

The district court denied respondent Rule 50(a) motion after the close of petitioner case and after respondent case. Respondent filed a renewed Motion for Judgment Not Withstanding the jury verdict, Motion for a new trial, and Motion for Remituter. The District court granted respondent Rule 50(b) motion without oral argument and set aside the Jury verdict. **(App. pp.4a-11a)**, and the Eleventh Circuit Court of Appeals affirmed in a Per Curiam opinion on July 30, 2002 **(App. Pp.1a-3a)** and denied Petitioner Petition for Rehearing and Petition for Rehearing En Banc in a Per Curian on November 12, 2002 **(App. Pp.3a-4a)**.

The facts show the following.

The State of Florida Department of Corrections had employed petitioner for twelve years at the time he filed his complaint in the district court. Petitioner was assigned as Correctional Probation Senior Officer supervising Community Control Offenders. Petitioner was denied over thirty (30) separate promotion, which he was qualified and applied but he was denied. On May 1, 1997 petitioner filed his race discrimination charge with the E.E.OC. alleging failure to promote to three (3) separate positions. Plaintiff file suit in 1998 after receiving a Notice of Right to Suit. The Petitioner suffered an adverse action while the suit was pending before the district court and petitioner filed an E.E.O.C. charge on September 14, 2000 alleging retaliation. Plaintiff amended his suit to include retaliation failure to promote to five (5) separate positions, which he was qualified and applied, but the respondent failed to interview plaintiff to any of the five (5) positions and negative job evaluation. Petitioner submitted his applications by fax mail and drop off at the personnel office. Respondent stated they never received two (2) of petitioner's application, two (2) positions were filled by reassignment and the fax application was received late. After the trial on the merit the jury returned a verdict in petitioner's favor.

In granting Respondent Rule 50(a) not withstanding the verdict on Count I Race Discrimination failure to promote the District court stated petitioner has failed to produce evidence to sufficient evidence that respondent legitimate non discriminatory was pretext and motivated by race and on Count II retaliation the District Court held that Petitioner as failed to prove a prima facie case by presenting evidence that they was causal link between the adverse action and the protected activity and petitioner failed to produce evidence that tending to prove that the respondent's proffered legitimate reason were pretext and no reasonable jury could have found in favor of petitioner.

The court of appeals affirmed the decision of the district court. With regard to race discrimination claim, the appellate court held that "all that appellant produce were his bald, conclusory allegations that race played a role in the decision-making". "In sum, because appellant presented not a scintilla of evidence that Appellee's proffered nondiscriminatory reasons for failing to promote him were pretextual, the district court's decision to grant appellee judgment as a matter of law is due to be affirmed". And on Count II Retaliation the Court of Appeals rule "appellant failed to established a

casual link between his protected expression and the adverse employment actions and the district court properly granted appellee judgment as a matter of law".

REASONS FOR GRANTING WRIT

THIS CASE RAISES IMPORTANT ISSUES CONCERNING THE STANDARDS FOR GRANTING RULE 50 AFTER A JURY RENDERED A VERDICT IN AN EMPLOYMENT DISCRIMINATION CASE

Petitioner urges that this case should reverse on Count II retaliation and remand on Count I. Race Discrimination in light of this Court's decision in **U.S. Postal Service BD. Of Governors v. Aikens; 103 S. Ct. 1478, 1480, 1482, 460 U.S. 711 (1983)** and **Reeves v. Sanderson Plumbing Products, Inc.; 120 S. Ct. 2097, 2101, 2102, 2104, 530 U.S. 133 (2000), Daniels v. Williams 474 U.S. 327, 106 S. Ct. 662 (1986); Parratt v. Taylor, 451 U.S. 527, S. Ct. 1908 (1981)** and Court of Appeals decision in **Richardson v. Leeds Police Dept; 71 F.3d 891 (11th Cir. 1995), EEOC v Joe's Stone Crab; 296 F.3d 1265, 1273 (11th Cir. 2002); Olmsted v. Taco Bell Corp; 141 F.3d 1457 (11th Cir. 1998).**

The district court granted Rule 50(a) notwithstanding the jury verdict based on it erroneous view of the facts. **(App Pp.4a-11a)** The jury rendered its verdict based on the evidence presented on petitioner's retaliation claim and was hung on petitioner's race discrimination claim believing petitioner submitted his employment applications and the fact the defendant stated they never received the applications when petitioner testified he mailed, dropped off, and his fax applications and the respondent secretly filled all five (5) positions without interviewing petitioner. Petitioner testify a trial he submitted his application for position # 900252 on October 20, 1999 to the respondent personnel office and he did not receive an interview or any response from the respondent and upon contacting the personnel office petitioner was told that there was no position 900252 and he put the wrong position # on the application. **(R-279 pg. 591-594).**

Plaintiff testify he continue to check on position # 900252 and later discovered that position # 900252 Correctional Service Administrator was a batch position for three separate positions that was filled by three employees, Thornton, Lawrence, and Snow on March 2, 2000, which an interview took place and he was not interviewed. **(R-279 pg. 591, R-279 pg. 596-600,** and **R-279 pg. 591).**

Plaintiff testify he mailed his application for position #01222 March 2, 2000 and he received no response from defendant. **(R-279 pg. 600). Record 320** and defendant exhibit **#63** which was admitted into evidence verified the signature of the hiring authority, Fred Schuknecht has he signed petitioner's EEO investigation on August 22, 1997 for petitioner May 1, 1997 race discrimination EEOC completed by his office August 22, 1997 as he was the Chief Inspector for the Respondent Inspector General Office. **(App. 12a-21a)** Schuknecht was also the hiring authority for position # 05440 Correctional Inspector that plaintiff applied for on October 4, 2000 prior to filing his EEOC charge on September 14, 2000 (less than one (1) month), close temporal proximity to prove causation; **Weaver v. Casa Gallardo; 922 F.2d 1515, 1524 (11th Cir. 1991)** that respondent stated they received petitioner one application late that was fax twice. **(R-279 pg. 601-603).** Respondent own witness **Noske (R-283- Pg. 1638, 1641)** testify **"Q.** did you recall looking for plaintiff's application for 900252; were you able to find it; **Answer** (Yes) we found the folder, and was Mr. Campbell's application in that folder; answer; Tammy Harsma when we found it, she picked it up and walk off with it. The jury could have inferred that Harsma was responsible for the missing application for position #900252. Positions # 21133 and position # 21155 Correctional Probation Specialist. Plaintiff testified at trial he submitted his applications March 2001 and received letters stating the positions was cancelled. **(R-279 pg. 591-610; R-280 pg. 947).** Respondent filled both position by reassignment on April 13,2001 and April 6, 2001. The proper hiring authority Haley and Harper was aware of plaintiff's protected activity. (Defendant exhibit **63, R-320, R-279 pg. 556-559, R-279 pg. 748, R-283-1656-1657**). Respondent identify the wrong hiring as Harsma a Personnel Tech who has no hiring authority and the district court believed respondent and disregarded petitioner objection. Respondent also gave petitioner a negative performance evaluation the court choose to use as evidence of retaliation instead of a separate count of retaliation. Respondent own

witness Rogatz (**R- 279 pg. 799-800- 802**) "everyone in management he dealt with knew about plaintiff lawsuit which the jury infer to include Schuknecht, Villacorta, Harsma as Rogatz worked with each of then." The evidence in the record reflected petitioner was way more qualified than the two candidates who were promoted to position #23894 and 10785. (**R-278 pg. 416, 417**) and the other candidate Strach had a discipline responded tried to concealed. (**R-279 pg. 537, 538,539**) but was later told to demote Strach and issue him a reprimand.

On the race discrimination the district court ruled plaintiff provide evidence of a prima facie case but disregard petitioner evidence of pretext. (**App. Pp.4a-11a**) . Plaintiff did not have to prove respondent was motivated by race in their decision, petitioner only have to undermine respondent legitimate reason for their action and judgment as a matter of law should have been denied. **Reeves at 120 S. Ct. 2104, 2105 (2000).** There was evidence in the record of discriminatory animus by the hiring authority, Haley stating a white employee Jimmy Nelson was "behaving like a right old blackie". (**R-281 pg. 1111-1112**) and Harper used racial epithet referring to his boss Carl Berry, black male as "that nigger downstairs". (**R-281 pg. 1114, 1116-1117**). There was also testimony that respondent harbor racially offensive material in the work place identifying black male as "I am dummy, black male" in respondent computer training material at the respondent academy. **(R- 281 pg. 1237).**

The district court instructed the jury to consider the missing evidence of petitioner's employment application respondent's stated they never received as their proffered reason because the missing evidence would have helped prove petitioner case which the jury did in reaching their verdict in petitioner's favor on the retaliation claims; **Federal Regulation 29 C.F.R. § 1602; Brynie v. Town of Cromwell, Board of Education; 243 F.3d 93, 107 (2nd Cir. 2001). (R- 283 pg. 1859-1879).**

The jury rendered a verdict for petitioner on Count II, retaliation and awarded petitioner lost wages in the amount of **$17, 298.03** for position # 900252 and **$232,701.97** for emotional pain and anguish (App. **Pp.4a-11a.)** based on their view of the evidence but the district court set aside the jury verdict.

In granting the respondent Rule 50(b) not withstanding the jury's verdict setting aside the jury verdict the district court made its own credibility

determination and weigh the evidence, and failed to draw all reasonable inferences in favor of petition the nonmoving party; **Reeves v. Sanderson Plumbing Prods. Inc., 530 U.S. 133, 150 (2000)** and disregarded evidence favoring petitioner prima facie case and pretext; **Reeves at 120 S. Ct. 2097, 2101, 2102 (2000). (App. Pp. 4a-11a.).**

At **(App. Pp.4a-11a)** the court made it own credibility determination stating, "if anything, that application was never sent at all". The jury did not believe respondent proffered reasons in rendering their verdict in favor of petitioner and it was the district court role to disregard all evidence favorable to the respondent that the jury is not required to believe but the district court did because respondent is a state agency and the district court did not want to punish respondent thereby depriving petitioner due process equal protection of the law under the Fourteenth Amendment.

The district court and the Appeals Court rule plaintiff failed to prove prima facie case

On his retaliation however, this court rule in **U.S. Postal Service Board of Governors v. Aikens; 103 S. Ct. 1478, 1481, 1482, 1483 (1983)** " states a because this case was fully tried on the merits, it is surprising to find the parties and the Court of appeals still addressing the question whether petitioner/plaintiff made out a prima facie case" by framing the issue in these terms they have unnecessarily evaded the ultimate questions of discrimination". "When the defendants fail to persuade the district court to dismiss the action for lack of a prima facie case, and responds to plaintiff's proof by offering evidence of the reason for the plaintiff's rejection, the fact finder must then decide whether the rejection was discriminatory within Title VII". At this stage, the **McDonnell-Burdines** presumption "drop from the case,"**450 U.S.** at **255 n. 101 S. Ct. 1095** "the factual inquiry proceeds to a new level of specificity." Id., **255, 101 S. Ct., 1095.**

A properly instructed jury returned a verdict for plaintiff and the district court should not have disturbed the jury's verdict by re-visiting the prima facie case issue, the court role was to determine is the respondent intentional discriminate against petitioner.

Indeed, this case presents an example of why the decision in **Reeves, supra 120 S. Ct. 2097, 2101, 2102,2104, 2105 (2000)** and **Aikens; 103 S. Ct. 1478, 1481-1483 (1983).** The district court and the Eleventh Circuit clearly weigh the evidence, made its own credibility determination, disregarded evidence of petitioner's prima facie case and pretext and failed

to view the evidence in the light most favorable to the nonmoving party (petitioner); **Reeves; 120 S. Ct. 2097, 2101 (2000).** The courts disregarded evidence that plaintiff mailed, fax and dropped off his employment applications and the evidence that the respondents hiring authority was aware of petitioner's protected activity, i.e. lawsuit and EEOC charges of discrimination and was aware of Strach discipline when he was promoted and petitioner's evidence proving he was more qualified than the two candidates who landed the two position in the race discrimination and the rebutted evidence that Payton was not a good field officer and relied on respondent subjective criteria the work sample and the oral interview has the undisputed documented evidence; education, work experience, tenor, better performance experience letter of accommodation also received by petitioner by petitioner and relied on respondent impeached testimony that the jury failed to believe. The courts believed respondent testimony that they did not receive petitioner's employment application even though the testimony for position #900252 that the respondent attempt to concealed position #900252 when petitioner inquired at the personnel office that respondent states does not exist and informed petitioner he put the wrong position number on his employment application when he inquired why he has not heard back form respondent after he submitted his application in person and had not received an interview after petitioner heard the position was filled. Why would any reasonable person made all these inquire about a position if he or she did not submit an employment application for the position? The jury believed petitioner's evidence and testimony and exhibit # 16 **(R-279 pg. 592)** and rendered a verdict in petitioner's favor and awarded petition lost wages in the amount of $17,298.03. The jury verdict's should not have been substituted or second guess as its was supported by sufficient evidence based on the jury's finding; **Lambert v. Fulton County; 253 F. 3d 594, 595 (11th Cir. 2001).** The evidence was one sided and petitioner prevailed as a matter of law based on the jury's finding; **EEOC V. W&Q Inc., 213 F.3d 600, 610 (11th Cir. 2000)**

Not one, but two courts, the district court and the court of appeals, erred in their views of the facts, erred that might not occurred if the respondent was not a government agency also in violation of petition's fourteenth amendment due process equal protection of right.

The appropriate disposition of this court is to reverse on Court II retaliation and reinstate the jury's verdict and remand Count I to the district court for a new trial

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully Submitted,

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2817 SW 4th Court
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APPENDIX

DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
November 12, 2002

PER CURIAM:

The Petitioner (s) for Rehearing are Denied and no member Of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing En banc (Rule 35 Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Petition (s) for Rehearing En Banc are DENIED.

DECISION OF THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT
July 30, 2002

PER CURIAM:

At the conclusion of the jury trial in this case, the jury was unable to reach a verdict on appellant's claim that appellee had violated Title VII of the Civil Rights Act by failing to promote him to two positions because he is black. See Civil Rights Act of 1964, Pub. L. No. 88-352 (1964) (codified as Amended at 42 U.S.C. § 2000e). The jury reached a verdict awarded money and damages, however, on appellant's additional claims that appellee violated Title Vii when it retaliated against him – for filing charges with the Equal Employment Opportunity Commission (EEOC) and prosecuted this lawsuit. The court, which had reserved ruling on appellee's motion for judgment as a matter of law at the close of the evidence, granted appellee judgment as a matter of law after the jury was discharged. Appellant, proceeding pro-se now appeals. His appeal is two-fold; he contends that the court erred as a matter of law in disposing of both of his claims. We begin appellant's claim that appellee's decision not to promote him was based on his race.

I.

Title VII makes it unlawful for an employer "to discriminate against any individual with respect to his compensation, term, condition, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). In this case, appellant had no direct evidence of racial discrimination; instead, he relied on circumstantial evidence. Under McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 688 (1973), and Texas Dep't of Comty. Affairs v. Burdines, 450 U.S. 248, 101 S. Ct. 1089, 67 L. Ed. 2d 207 (1981), a plaintiff relying on circumstantial evidence of discrimination establishes a prima facie case by showing that: 1) he his a member of a protected minority group; 2) he was qualified for and applied for the promotion; 3) he was rejected in spite of his qualification; and 4) the individual who received the promotion is not a member of a protected group and had lesser or equal qualifications. Carter v. Three Springs Residential Treatment, 132

F. 3d 635, 642 (11th Cir. 1998). Once the plaintiff establishes a prima facie case, the burden shift to the defendant to "articulate some legitimate, nondiscriminatory reason" for the employment action. McDonnell Douglas Corp., 411 U.S. at 802, 93 S. Ct. at 1824. If the defendant is able to satisfy this burden, the plaintiff must then show that the proffered reason is merely a pretext for discrimination. Burdines, 450 U.S. at 253, 101 S. Ct. at 1093.

We assume for purposes of this appeal that appellant established a prima facie case under Carer standard. As appellant concedes, appellee therefore met its burden of articulating nondiscriminatory reasons for failing to promote appellant by introducing the testimony of those who interviewed appellant and the decision-maker. The burden then shifted back to appellant to show that the reasons the interviewers and decision-maker gave for their decisions were pretextual. See Burdines, 450 U.S. at 253, 101 S. Ct. at 1093. Appellant, however, presented no evidence of pretext, i.e., evidence that contradicted the testimony of appellee's witnesses who said race was neither mentioned, discussed, nor considered in the hiring/promotion process, and that the persons who were promoted were as qualified, if not more so, than he was. All that appellant produce was his bald, conclusion allegations that race played a role in the decision-making. In sum, because appellant presented not a scintilla of evidence that appellee's proffered nondiscriminatory reasons for failing to promote him were pretextual, the district court's decision to grant appellee judgment as a matter of law is due to be affirmed.

II.

We now address appellant's argument that he made out a case for the jury on his claim that appellee failed to promote him because he engaged in the protected activities of filing EEOC charges and instituting the lawsuit at hand.

Appellant contends that Maria Vilacorta and Fred Schuknecht, the officials responsible for filing the positions he sought, which were five in number, were, at the time they turned him down, were aware that he had filed charges with the EEOC and commenced this litigation. As circumstantial evidence of their awareness, he points to the close proximity between the filing of the EEOC charges and his application for the positions at issue.

Title VII makes it unlawful for an employer to retaliate against an employee "for making charges, testifying, assisting, or participating in enforcement proceedings." 42 U.S.C. § 2000e-3. To establish a prima facie case of retaliation, the plaintiff must show that: 1) he engaged in expression protected by statue; 2) he suffered an adverse employment action; and 3) there was a causal link between the protected expression and the adverse action. Wideman v. Wal-Mart Stores Inc., 141 F. 3d 1453, 1454 (11th Cir. 1998). The filing of an EEOC charge or commencement of a discrimination action is protected expression. Pipkins v. City of Temple Terrace, 267 F.3d 1197, 1201 (11th Cir. 2001); Hairston v. Gainesville Sun Publ'g Co., 9 F. 3d 913, 920 (11th Cir. 1993). The denial of a promotion is an adverse employment action. Walker v. Mortham, 158 F. 3d 1177, 1185-93 (11th Cir. 1998), cert. Denied, 528 U.S. 809 (1999). To establish a causal link the "plaintiff need only establish that the protected activity and the adverse action were not wholly unrelated." Goldsmith v. City of Atmore, 996 F.2d 1155, 1163 (11th Cir. 1993 (internal citations omitted). "At a minimum, a plaintiff must generally establish that the employer was actual aware of the protected expression at the time it took adverse employment action." Id. (noting the defendant awareness may be established by circumstantial evidence).

It was undisputed that appellant's filing of EEOC charge and this lawsuit were protected expression. (See R16 at 1992). Although the is not clear as to when appellant applied for the positions at issue, we assume for sake of argument that he properly applied for the positions, and that appellee's failure to promote him constitute an adverse employment action. The problem it that appellant presented no evidence from which a reasonable jury could infer that, at the time the decisions not to promote appellant were made, Villacorta, Schuknecht, or any one else involve in the decision-making, knew that he had filed EEOC charges or brought this lawsuit. In short, appellant failed to establish a causal link between his protected expression and the adverse employment actions, and the district court properly granted appellee judgment as a matter of law on appellant's retaliation claim.

AFFIRMED.

DECISION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, DECEMBER 19, 2001

ORDER GRANTING DEFENDANT'S MOTION FOR JUDGMENT AS A MATTER OF LAW NOTWITHSTANDING JURY VERDICT

THIS CAUSE comes before the court upon defendant. State of Florida Department of Corrections' (DOC) motion for judgment as a matter of law notwithstanding the jury verdict, pursuant to Fed. R. Civ. P. 50(b). Upon review of the motions and relevant case law, defendant's motion will be granted.

BACKGROUND

The defendant, Florida Department of Corrections, has employed plaintiff Donald Campbell a black male for the past 17 years. Mr. Campbell claimed hat DOC engaged in race-based discriminatory employment policies in violation of Title VII. Specifically, he contended that the Doc failed to promote him, based on his race, in two instances in 1996, and retaliated against him for engaging in statutorily protected activity when he filed complaints of discrimination with the EEOC. As part of the retaliation claim, Mr. Campbell contended that he was denied approximately twenty additional promotions for which he was qualified between July 1996 and April 2001 that he was subjected to a hostile work environment.

At trial, the alleged adverse employment actions were narrowed to seven alleged instances of failure to promote. Two positions, # 23894 and #10785 were the focal point of plaintiff's failure to promote count. Five other positions, #900252 in October 1999,
#01222 in March 2000, #05440 in October 2000, #21133 in April 2001, and #21151 in March or April 2001, formed the basic of plaintiff's retaliation claim. The jury unable to reach a unanimous verdict on the failure to promote claim (Count I), and therefore the court declare a

mistrial on this claim. On the retaliation claim, however, the jury returned a verdict in favor of the plaintiff, and awarded Mr. Campbell damages of $17,298.03 for net lost wages and $232,701.97 for emotional pain and anguish. Defendant's motion for judgment as a matter of law notwithstanding jury verdict followed.

DISCUSSION

A. Standard of Review

A district court, during a jury trial after a party has been fully heard on an issue, may rule against the party on that issue and grant a motion for judgment as a matter of law against that party if" there is no legal sufficient evidentially basis for a reasonable jury to find for that party on that issue," and the party's claim or defense " cannot under the controlling law be maintained or defeated without a favorable finding on that issue." Fed. R. Civ. 50(a). When ruling on a renewed motion for judgment as a matter of law, the district court may allow the judgment to stand, if a verdict was render, order a new trial, or direct entry of judgment as a matter of law. Fed. R. Civ. P. 50(b).

Regardless of whether the courts is ruling on a pre-verdict Rule 50(a) motion or a post-verdict Rule 50(b) motion, the court must view all evidence most favorable to the non-moving party and draw all reasonable inferences in favor of the non-moving party. Isenbergh v. Knight-Ridder Newspaper Sales Inc. 97 F.3d 436, 439 (11th Cir. 1996). When deciding a motion for judgment as a matter of law, a court "must draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence." Reeves v. Sanderson Plumbing Prods. Inc., 530 U.S. 133, 150 (2000). However, the non-moving party must provide more that a mere scintilla of evidence to survive a motion for judgment as a matter of law. See Insbergh, 97 F.3d at 444.

B. McDONNELL- DOUGLAS BURDEN-SHIFTING FRAMEWORK

A plaintiffs claiming race discrimination in violation of Title Vii may prove his case through direct or circumstantial evidence. Where the

plaintiff uses circumstantial evidence, the court uses the burden-shifting framework outline in McDonnell-Douglas v. Green, 411 U.S. 792, 802 (1973) and as modified in Texas Dep't Community Affairs v. Burdine, 450 U.S. 248, 252 (1981). The plaintiff must establish, by a preponderance of the evidence, a prima facie case of a Title VII violation. If the plaintiff succeeds in proving his prima facie case, he has established a presumption of discrimination, and the burden of production shift to the defendant to articulate a legitimate, nondiscriminatory reason for its conduct. The defendant need not persuade the trier of fact that it was actually motivated by the proffered reason. If the defendant satisfies its burden of production, the plaintiff's presumption is rebutted. The defendant must demonstrate, by a preponderance of the evidence, that the defendant's proffered reasons are pre-textual. Nevertheless, the ultimate burden rests with the plaintiff to persuade the trier of fact that the defendant engaged in discriminatory conduct.

To establish a prima facie case of race discrimination, plaintiff must demonstrate that: 1) he is a member of a protected class; 2) he was qualified to do the job; 3) he was subjected to adverse employment action; and 4) his employer treated similarly situated non-black employees more favorably. See Maniccia v. Brown, 171 F.3d 1363, 1368 (11th Cir. 1999), Holifield v. Reno, 115 F.3d 1555, 1562 (11th Cir. 1997). If the employer has proffered a legitimate, non-discriminatory reason, the plaintiff bears the burden of establishing pretext, and must present significantly probative evidence on the issue; Young v. General Foods Corp., 840 F.2d 825, 829 (11th Cir. 1988). "Conclusory allegation of discrimination, without more, are not sufficient to raise an inference of pretext or intentional discrimination where an employer has offered extensive evidence of legitimate, non-discriminatory reasons for its actions." Young, 840 F.2d at 830.

C. MERITS OF PLAINTIFF'S CASE

Count I- Race Discrimination (Failure to Promote)

Count I of plaintiff's Third Amended Complaint alleged that the DOC discriminated against him on the basis of race by denying him promotion

on two separate occasions in 196. For simplicity's sake, these were referred to as the "Payton position" (#23894) and the "Strach position" (10785). Now, in its motion for judgment as a matter of law, the DOC argues that Mr. Campbell's race discrimination claim must fail for two reasons: (1) plaintiff failed to meet his burden of proving a prima facie case; and (2) plaintiff failed to produce competent evidence establishing that defendant's proffered reason for its decision to promote Messrs. Payton and Strach to two positions is pretextual, and that the real motive was race discrimination.

Specifically, to prove a case of failure to promote race discrimination claim, plaintiff must establish the following prima facie case: (1) plaintiff is a member of a protected class; (2) plaintiff was qualified for and applied for the promotions; and (3) plaintiff was rejected from the position. Walker v. Mortham; 158 F.3d 1177, 1185 (11th Cir.1988). This court finds that plaintiff presented sufficient evidence at trial to establish a prima facie case of failure to promote-race discrimination under the Mortham standard. Indeed, defendant has conceded as such in its motion. Plaintiff set forth evidence that (1) he is a member of a protected class, (2) he was qualified for and applied for the Payton and starch positions, and (3) he was denied the promotions.

The court further finds that DOC met its burden of production to proffer a legitimate, non-discriminatory reason for its action: namely, that Mr. Campbell was not one of the three recommended applicants for each position and that Messrs. Payton and Strach were more qualified for the positions.

However, this court finds that plaintiff failed to establish, by competent, probative evidence that DOC's proffered reasons were false, or that racial animus was the real motivating factor. A plaintiff may seek to demonstrate that the employer's proffered reason was not the true reason for the employment decision "either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence." Burdines, 450 U.S. at 256; Munoz v. Oceanside Resorts, Inc., 223 F.3d 1340, 1346 (11th Cir. 2000); Combs v. Plantation Patterns, 106 F. 3d 1519, 1528 (11th Cir. 1997).

Payton Position

Plaintiff applied for a correctional probative specialist position (#23894) that was ultimately filled by Alan Payton, a white male. The interview panel for that position consisted of Barry Groves, a white male, Gabrielle Booker-Tunnage, a black female and Diana Woolslair, a white female. The ultimate hiring official was Tony Harper. All four persons involved in this hiring decision testified at trial.

The interview panel interviewed applicants, including Mr. Campbell, and recommended three applicants to Mr. Harper: Robert Lezotte, Kathy Norton, and Alan Payton. From the three recommended applicants, Mr. Harper selected Mr. Payton to fill the position. Mr. Harper testified that he based his decision upon his review of Mr. Payton's case reviews and a commendation letter contained in the personnel file that lauded Mr. Payton as "an excellent field officer."

Shortly after this hiring decision, plaintiff filed a union grievance contending that police Benevolent Association rules were not followed in this hiring process because too many applicants had been interviewed. Carl Berry, a black male and the regional director at the time, responded to plaintiff's grievance by requiring a re-interview by the same panel. The panel conducted the interviews again, and recommended the same applicants. Again, Mr. Harper promoted Mr. Payton into the position. The three members of the interview panel and Mr. Harper testified at trial that race was not discussed or relied upon when making this hiring decision.

It is undisputed that the DOC's hiring process entailed the use of a hiring panel that would cull through the applications and recommend three persons to the ultimate hiring authority. With respect to the Payton position, all three members of the panel – Mr. Groves, Ms. Booker-Tunnage, and Ms. Woolslair- uniformly denied that race was ever mentioned, discussed, or considered in making the hiring recommendations. Significantly, plaintiff failed to adduce any evidence to contradict this assertion. He simply contented that the panel's failure to recommend him established racial bias. The evidence further established that only those names presented by the panel were considered by the hiring official. Even if it could be shown that Mr. Harper harbored racial animus owing to an alleged comment he may have made, it would not be probative evidence of whether Mr. Campbell himself was subject to race

discrimination without a showing that Mr. Harper influenced the panel's decisions. There is no evidence that he did so influence the panel, or that the panel itself discriminated on the basis of race.

Plaintiff also failed to produce sufficient evidence that DOC's explanation - that Mr. Payton was better qualified – was pretextual. "[E]vidence showing an employer hired a less qualified applicant over the plaintiff may be probative of whether the employer's proffered reason for not promoting plaintiff was pretextual." Alexander v. Fulton County, Ga., 207 F.3d 1303, 1340 (11th Cir. 2000). Mr. Groves testified that Mr. Payton's answers during his interview, and his written work sample, were better than those of the plaintiff. Ms. Woolslair testified that Mr. Payton was better suited for this position based on all of the selection criteria, including, but not limited to, the oral interview and work sample submitted by all applicants for this position.

By all accounts, the panel based its decision on which to recommend on a host of criteria, including education, performance, experience, length of employment with the state, interview, work history, and work sample. Mr. Campbell's contentions that he had five years more seniority than Mr. Payton, or that he may have had more educational credits than the other applicants, are simply not sufficient to support a finding that he was substantially more qualified than Mr. Payton. While plaintiff seeks to piecemeal dissect each of the stated criteria to prove that he is arguably more qualified than Mr. Payton, the evidence does not demonstrate that, given all of the factors considered in their entirety, he was substantially or significantly more qualified than Mr. Payton. The Eleventh Circuit has required the plaintiff present a "strong showing of a disparity in qualifications in order for an inference of discrimination to arise." Denney V. City of Albany, 247 F.3d 1172, 1187 (11th Cir.2001) The court may not sit as a "super-employer" or personnel department oversight board charged with reviewing the merits of every employment decision. See id. At 1186.

Plaintiff goes to great lengths to point out that Gary Rogatz, a circuit administrator, at first stated in an affidavit that he participated in the screening and/or interviews of the applicants for the Payton position, but later retracted that statement and conceded under cross-examination that the in fact did not participate, and claimed that he made a mistake. Plaintiff also notes that Mr. Groves could not explain why he asked Mr. Rogatz to sign an affidavit, was somewhat "snippy" or "short" with

plaintiff during the second set of interviews, and conceded at trial that he deemed Mr. Payton as more qualified than plaintiff based on "his own subjective application." Mr. Campbell contends that these circumstances "could reasonable be deemed rather suspicious by a jury." Nevertheless, none of this largely irrelevant material is probative evidence that the panel itself based its decisions on race.

While plaintiff is correct in his assertions that courts must examine with greater caution an employer's claim that it relied on subjective criteria in making its employment decision, or an employer's deviation from its standard policies and procedures, it is completely permissible for an employer to base its hiring decisions on subjective factors, so long as the are not based on a prohibited discriminatory basis. In this case, it is undisputed that the screening process entailed the use of both objective and subjective criteria. But plaintiff has failed to demonstrate that defendant "rel[ied] on nothing more than subjective evaluations, and the Defendant {} seriously deviated from its own policies, in its treatment of Plaintiff." Plaintiffs Response, p.21. The panel for the Payton position, by all accounts, employed the established criteria, and was permitted to narrow the pool of applicants based in part on the subjective factors of the interview and the work sample.

Strach position

Plaintiff applied for another correctional probation specialist position (#10785) that was filled by Mark Strach, a white male. The three members of the interview panel were Melvin Davis, a black male, Grace Fishter, an Italian-American female, and Pamela Johnson Thornton, a black female. The hiring official for this position was Joyce Haley. The panel recommended the following three applicants to Ms. Haley: Sonya Jones, a black female, Angela King, a black female, and Mark Strach. Ms. Haley selected Mr. Strach to fill the position.

Ms. Thornton, the panel chairperson, testified that Mr. Campbell called her the day of the interview to waive his oral interview. Ms. Thronton further testified that work samples are distributed to applicants at the interview, and as a result Mr. Campbell did not submit a work sample for

the panel's consideration. In the application package for this position, a fact sheet lists next to plaintiff's name "waived" in the column titled "oral interview" and "none" in the column titled "work sample." Ms. Thornton identified the handwriting as her own and testified that she wrote those remarks the day before the panel conducted the interviews. Ms. Thornton identified the handwriting as her own and testified that she wrote those remarks the day before the panel conducted the interviews. Ms. Thornton and Ms. Fishter testified that Mr. Strach interviewed well. Three out of four of the persons involved in this hiring decision – Ms. Haley, Ms. Fishter, and Ms. Thornton – testified at trial. They testified that race was not discussed or relied upon in making their decisions.

Plaintiff stated that he could not definitely state that he interviewed for this position, but simply that he remembers attending "an interview" with Ms. Thornton present. DOC contends that Mr. Campbell's inability to state that he interviewed for this particular position fails to create a dispute as to a genuine issue of material fact. DOC adds that Mr. Campbell interviewed for dozens of promotions over the last few years and apparently did not keep records detailing what positions for which he applied and who was present at the interviews.

With respect to the Strach position, three of the four persons involved in this hiring decision – Ms. Haley, Ms. Fishter, and Ms. Thornton) the latter two persons served on the panel – testified that race played no part in their decision. Moreover, it is undisputed that plaintiff waive his oral interview with the panel and did not submit a work sample. Two other applicants who did not appear for their interviews were not chosen for this position. The witnesses at trial testified that Mr. Strach was imminently qualified for this position and better suited than the other two recommended applicants or plaintiff.

Plaintiff further pointed out that Ms. Thornton, Ms. Fishter, and Ms. Haley, persons involved in the hiring for the Strach position who testified at trial, made a variety of inconsistent statements and therefore their testimonies lack credibility. Ms. Thorntons and Ms. Fishter's supposed inconsistency regarding whether an oral interview was, in essence, a requirement for consideration for the promotion arguably does tend to disprove at least part of the defendant's proffered explanation. Plaintiff noted that Mr. Lezotte and Ms. Norton, who applied for the Payton position, had waived their oral interviews but nonetheless were two of the

three finalists for that position. Defendant argues that Mr. Lezotte and Ms. Norton in fact did sit for interviews in the first round, and the panel relied on those. However, it is undisputed that Mr. Strach attended an interview, and Mr. Campbell did not. The fact that this panel designated two black women candidates out of the three persons recommended strongly negates any inference that the panel itself was racially biased.

Plaintiff also alleges that Ms. Fishter gave inconsistent responses when asked whether she knew at the time of the interview whether Mr. Strach was being subjected to disciplinary action. But the relevant inquiry is whether at the time of the interviews Ms. Fishter knew he was the subject of pending disciplinary action. At no point did Ms. Fishter testify that she knew, at the time of the interview in September 1996, of any possible disciplinary proceedings against Mr. Strach.

Plaintiff contends that Ms. Haley was also inconsistent in her responses about when she became aware of Mr. Strach's possible policy violation. But Ms. Haley has consistently denied that she ever received a memo requesting disciplinary action prior to the promotion, and Mr. Strach was not actually reprimanded until after he was promoted. Thus, the mere possibility that Ms. Haley may have heard about Mr. Strach's violation almost a year prior to the interviews is of minimal evidentiary significance. Finally, plaintiff's allegation that Ms. Haley made racially insensitive remarks about another black individual is not significantly probative evidence because she was not a member of the panel that recommended the three applicants, and therefore was not part of the decision-making group that decided to eliminate Mr. Campbell from the pool of candidates.

. . .

As defendant indicates, there is no evidence that the panels discriminated on the basis of race, or that the hiring officials instructed the panels to consider race. Defendant presented evidence at trial supporting its explanation – that Mr. Campbell was not among the top three applicants for each position and that the persons hired were better qualified. Plaintiff failed to produce sufficient evidence to prove that the defendant's proffered reasons were false or that race was the actual motivating factor. While

evidence tending to disprove the employer's proffered reason may be probative evidence of discrimination, the finder of fact must also conclude that racial discrimination was the real motive to sustain a verdict in favor of the plaintiff. See Reeves, 530 U.S. at 146, 147. No reasonable jury could have found in favor of plaintiff on the race discrimination-failure to promote claim, and therefore this court will enter judgment as a matter of law in favor of the defendant as to Count I.

Count II – Title VII Retaliation Claim

Count II of plaintiff's complaint alleged that the DOC retaliated against him for filing his race discrimination complaint by failing to promote him to a number of positions, in violation of Title VII. The DOC contends that plaintiff's claim of retaliation must fail as a matter of law for two reasons: (1) the evidence does not establish a causal relationship between plaintiff's statutorily – protected activity and the alleged instances of failure to promote; and (2) plaintiff has not adduced evidence sufficient to establish that defendant 's reasons for not promoting plaintiff on the five occasions at issue are pretextual.

To establish a prima case of retaliation under Title VII, a plaintiff must show: (1) he engaged in statutorily – protected activity; (2) he was subjected to an adverse employment action; and (3) the adverse action was causally related to plaintiff's protected activities. See Farley v. Nationwide Mut. Ins. Co., 197 F.3d 1322, 1336 (11th Cir. 1999); Olmsted v. Taco Bell Corp., 141 F.3d 1457, 1460 (11th Cir. 1998). An "adverse employment action: has been construed broadly. According to the Eleventh Circuit, "Title VII's protection against retaliatory discrimination extends to adverse actions which fall short of ultimate employment decisions." Wideman v. Wal-Mart Stores, Inc., 141 F.3d 1453, 1456 (11th Cir. 1998). To prove a causal connection, plaintiff must show "that the protected activity and the adverse action were not wholly unrelated." Farley, 197 F.3d at 1337.

The court finds that he plaintiff presented sufficient evidence at trial that he satisfies the first two prongs of the prima facie case as to both claims – plaintiff engaged in statutorily – protected activity when he filed his three

complaints with the EEOC in May 1997, February 1999, and September 2000 and when he filed his lawsuit in 1998, and that he was subjected to an "adverse employment action" when he was not promoted to the positions at issue. Defendant has conceded that plaintiff can establish these two elements with respect to all five positions relevant to this count.

However, defendant argues that plaintiff did not and cannot demonstrate evidence that his filings of EEOC complaints and this lawsuit were "not wholly unrelated" to the failure to promote. Defendant contends that with respect to all five of the retaliation claims, plaintiff failed to produce evidence that the relevant decision-makers were actually aware of his protected activity at the time the hiring decisions were made. Defendant adds that the length of time between the plaintiff's protected activity and the alleged instances of failure to promote was too great to warrant a reasonable inference of a causal relationship. Moreover, the department contends that these five alleged instances of failure to promote cannot be "retaliation" because the plaintiff applied for promotions about 65 times and that there is no evidence to suggest that the five instances of rejection following the plaintiff's protected activities were any different from the dozens of instances of denials of promotions prior to the activities. In other words, there was no "ratcheting up" of denial of promotion that would be required to infer a retaliatory motive.

Position #900252 (October 1999)

In October 1999, plaintiff applied for a position as a correctional services administrator. He was not hired for the position. The DOC argues that this claim must fail as a matter of law because (1) Mr. Campbell failed to file an EEOC charge with respect to this position within the allowable time period; (2) this instance of alleged discrimination did not "reasonably grow out of the EEOC's investigation into the September 14, 2000 EEOC complaint; and (3) on the merits of the case, the evidence establishes that the department never received an application form the plaintiff. In light of our analysis of the defendant's arguments on the merits, we need not and need not address the DOC's first and second arguments with respect to this instance of alleged retaliation.

This court finds that the plaintiff failed to establish a prima facie case of retaliation because the evidence is insufficient for a jury to conclude that there was a causal relationship between the protected activity and the failure to promote. The hiring official with respect to this position was Maria Villacorta. Even if, as plaintiff contends, that Mr. Rogatz, Mr. Gorves, Mr. Harper, Ms. Haley, and others in the region's management were aware of his lawsuit, there is no evidence that Ms. Villacorta was even aware of the plaintiff's engaging in protected activity. While plaintiff state that when he inquired about this position, he was told that it did not exist, it does not indicate that the hiring authorities responsible knew about the activity. The alleged discriminatory officials- Mr. Harper and Ms. Haley – were not involved with this hiring decision. Assuming that Ms. Villacorta was aware of the plaintiff's EEOC complaints and lawsuit, there is no evidence of a causal connection between the plaintiff's complaints and the denial of the promotion.

Even if plaintiff established a prima facie case with respect to this instance of failure to promote, he failed to produce evidence tending to disprove the defendant's proffered reason for not promotion the plaintiff. The DOC's witnesses testified that they never received an application for this position from the plaintiff, and the official files for this position do not reflect that the DOC received plaintiff's application. There is no evidence that someone at the department actually received the application for position #900252, that any person who received the application did not include the application, or that the omission was a deliberate act based on retaliatory motive rather than a result of a mistake.

In his response to the defendant's motion, Mr. Campbell contends that the record contains ample evidence from which a jury could infer that the defendant's management, including Ms. Haley in particular, "repeatedly retaliated against employees who spoke up or spoke out against Haley and/or her management, including orchestrated terminations and/or disciplinary actions against several employees." Plaintiff has alleged that Ms. Haley operates in a vindictive manner and engineered the termination of Mr. Rogatz and Ms. Thornton earlier this year, and that Mr. Groves reprimanded Felix Lexima, Mr. Campbell's supervisor, because Mr. Lexima refused a request to provide further justification for his favorable rating of the plaintiff. While these allegations, if true, may tend to indicate animosity toward the plaintiff, they are not probative evidence of pretext

because Ms. Haley and Mr. Groves were not the officials in charge of the hiring decisions in the five positions at issue in the retaliation count, and do not tend to disprove the proffered explanations.

Because plaintiff failed to provide sufficient evidence supporting a prima facie case of retaliation, or that the defendant's stated reason was pretextual, the court will enter judgment as a matter of law in favor of the defendant with respect to this position.

Position #01222 (March 2000)

Plaintiff claimed that he applied for a position as an inspector in March 2000. He stated that he mailed an application to the Inspector General's office in Tallahassee, Fla. He was not hired for this position. The instance is the subject of Mr. Campbell's third EEOC complaint. Defendant argues that this claim must fail as a matter of law because (1) plaintiff failed to establish a prima facie case of retaliation, and (2) plaintiff failed to establish that the department's stated reason was pretextual.

As to this position, this court finds that the plaintiff failed to establish a prima facie case of retaliation because the evidence is insufficient for a jury to conclude that there was a causal relationship between the protected activity and the failure to promote. The hiring official for this position was Fred Schuknecht. There is no evidence that Mr. Schuknecht was aware of the plaintiff's engaging in protected activity. Moreover, the inspector general's office is in a separate branch of the department from the community corrections branch, where the alleged discriminatory officials worked. There is no evidence that Mr. Harper or Ms. Haley exerted control over this supposed decision not to promote.

Moreover, even if the plaintiff could conceivably establish a prima facie case as to this position, he failed to disprove the department's stated reason for failure to promote him – that the DOC never received an application from Mr. Campbell. Plaintiff also testified that while he kept copies of all job applications he submitted since 1998, he does not have a copy of his application for this position. Such a fact would tend to prove, if anything, that the application was never sent at all. Thus, the defendant is entitled to judgment as a matter of law with respect to this position.

Position # 05440 (October 2000)

Plaintiff claims that he applied for a position as a senior inspector. He was not hired for the position. At trial, he testified that he faxed his application to the inspector general's office in Tallahassee twice on the closing date before 5:00 p.m. on October 4, 2000. Again, defendant argues that this claim must fail as a matter of law because plaintiff failed to establish a prima facie case, and plaintiff failed to establish that the department's stated reason was pretextual.

This court agrees that Mr. Campbell has failed to present a prima facie case. The hiring official for this job was also Mr. Schuknecht. As with the inspector position, he cannot establish any causal link between his complaints and the failure to promote. Moreover, the department presented evidence that Mr. Campbell was not considered for the position because the Tallahassee office only received one application, and it was received at 11:23 p.m. that day, well after the 5:00 p.m. deadline. There were other applicants whose applications were not timely received who were not considered for this position. Plaintiff produced no evidence tending to dispute this proffered reason. Accordingly, the defendant is entitled to judgment as a matter of law with respect to this position.

Position #21133 (April 2001)

Plaintiff claims that on April 2, 2001, he applied for a position as a correctional probation specialist, and was not hired. Defendant states that this claim must fail as a matter of law because plaintiff failed to establish a prima facie case, and plaintiff failed to establish that the department's stated reason was pretextual. There is no evidence that the relevant hiring authorities were aware of the plaintiff's engaging in protected activity, or that they acted under the influence of certain alleged discriminatory officials. Further, the evidence is undisputed that then position was advertised in error. John Westmoreland had a pending request for reassignment and was thereby entitled to first priority before the position would be advertised. Naomi DeBrosse, a personnel technician in the personnel department, mistakenly advertised the position. Once she was made aware of the error she cancelled the hiring process as to all applicants

for the position. This court finds that the plaintiff failed to produce evidence tending to show a causal relationship between his protected activity and the decision not to promote, that the stated reason is pretextual, or that discriminatory animus was the motivation. Accordingly, the defendant is entitled to judgment as a matter of law with respect to this position.

Position #21151 (March/April2001)

Plaintiff claims that he applied for a position as a correctional probation specialist in March or April of 2001, and was not promoted to the position. Defendant states that this claim must fail as a matter of law because the plaintiff failed to establish a prima facie case, and plaintiff failed to establish that the department's stated reason was pretextual. The hiring official for this position was Tammy Harsma. The evidence presented at trial indicated that after the position was advertised, the individual employed at the time, William Preston, decided not to vacate the position. The personnel department cancelled the hiring process for this position as to all applicants. Plaintiff produced no evidence demonstrating a causal relationship between his protected activity and the decision not to promote, that the stated reason is pretextual, or that discriminatory animus was the motivation. Accordingly, the defendant is entitled to judgment as a matter of law with respect to this position.

. . .

Plaintiff's retaliation claim rests on the unsupported theory that because he engaged in the statutorily – protected activities of filing the EEOC complaints, and that he was not hired for positions to which he applied, the DOC failed to promote him because of his race. This court finds that plaintiff failed to produce sufficient evidence tending to prove that there existed a causal relationship between Mr. Campbell's filing of the civil rights complaints and the alleged acts of retaliation and failure to promote. While Mr. Campbell has alleged that some members of the department's management were aware of his EEOC complaints, he is unable to show that the particular decision makers with respect to the five positions at issue

were influenced by persons who knew about plaintiff's engaging in protected activity. Moreover, plaintiff failed to produce evidence tending to prove that the hiring officials acted with discriminatory intent or tending to disprove the department's proffered legitimate reasons.

For two of these positions, the defendant claimed never to have received Mr. Campbell's application. For another position evidence clearly indicates that the application arrived late. The openings for the other two advertised positions were cancelled, and no job applicants were considered. Significantly, the plaintiff, in his response to the defendant's motion for judgment as a matter of law, did not even address the pretext argument as to four of the claimed instances of retaliation. No reasonable jury could have found in favor of plaintiff on the retaliation-failure to promote claim, and therefore this court will enter judgment as a matter of law in favor of the defendant as to Count II.

CONCLUSION

For the forgoing reasons, it is hereby **ORDERED** and **ADJUDGED** that Defendant, State of Florida Department of Corrections' motion for judgment as a matter of law notwithstanding jury verdict is **GRANTED.** An amended final judgment will be entered in a separate order.

DONE and **SIGNED** in Chambers at West Palm Beach, Florida this 19th day of December, 2001.

s/_____
Daniel T. K. Hurley
United States District Judge

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STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS
OFFICE OF THE INSPECTOR GENERAL

INVESTIGATION #:#97-40656
EEOC CHARGE # 150972673

DATE: August 8, 1997

FROM: James V. Stucchi

TO: Fred Schuknecht, Inspector General

RECEIVED
AUG 15 1997
DEPARTMENT OF CORRECTIONS
OFFICE OF THE INSPECTOR GENERAL

EXHIBIT
"A" 1 of 10

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PRIOR INVESTIGATIONS

CASE #97-40656
EEOC CHARGE #150972673

SUBJECT	CASE #	CATEGORY	DISPOSITION
Joyce Hayley Director Community Corrections Region IV	94-40225	Age (EEOC)	Charge was Withdrawn
	94-40930	Race (EEOC)	None Given
	97-40803	Race (EEOC)	None Given

PRIOR INVESTIGATIONS

CASE #97-40656
EEOC CHARGE #150972673

SUBJECT	CASE #	CATEGORY	DISPOSITION
Valerie Rolle Correctional Probation Circuit Administrator	N/A	N/A	N/A

REPORT OF INVESTIGATION
OFFICE OF THE INSPECTOR GENERAL
DEPARTMENT OF CORRECTIONS

INVESTIGATION # 97-40656
EEOC CHARGE # 150972673

CORRECTIONAL INVESTIGATOR:	James V. Stucchi
DATE OF REPORT:	August 8, 1997
DATE OF INCIDENT:	May 1, 1997
CLASSIFICATION OF COMPLAINT/INCIDENT:	Discrimination/Race
LOCATION:	Parole and Probation Office 17-0
COMPLAINANT(S):	Donald G. Campbell, Correctional Probation Senior Officer B/M DOB: 2/6/60
VICTIM(S):	Donald G. Campbell, Correctional Probation Senior Officer
SUBJECT(S):	Joyce Haley, Director Community Corrections Region IV W/F DOB: 8/8/44
	Valerie Rolle, Correctional Probation Circuit Administrator B/F DOB: 11/9/52 15-0 Probation and Parole Office

RECEIVED
AUG 15 1997
DEPARTMENT OF CORRECTIONS
OFFICE OF THE INSPECTOR GENERAL

SYNOPSIS:
On May 1, 1997, Donald Campbell filed a complaint with the Metro-Dade Equal Opportunity Board and the Equal Employment Opportunity Commission.

Officer Campbell alleged he was discriminated against based on his race.

Mr. Campbell reported since 1995 he has applied for seven different positions and received notices of non selection.

Mr. Campbell alleged he was promised, in 1995, the next promotion by Correctional Probation Circuit Administrator Valerie Rolle.

Mr. Campbell stated the last three positions were filled with "Caucasians."

Ms. Rolle denied she promised Mr. Campbell a promotion.

Region IV Director of Community Corrections Joyce Haley denied Mr. Campbell's allegation.

ALLEGATION #1:
Correctional Parole Senior Officer Donald Campbell was discriminated against based on his race and denied promotion.

FINDINGS:
On May 1, 1997, Donald Campbell filed a discrimination complaint with the Metro-Dade Equal Opportunity Board and the Equal Opportunity Employment Commission.

> Officer Campbell wrote:
> "I am Black. I have been employed since 1983 and have been a Correctional Probation Officer II since August 1988.
>
> In 1995, as a grievance resolution, I was verbally promised promotion to the next available supervisory or specialist position by Ms. Valerie Rolle who was head of the grievance committee. Since then I have applied for promotions on seven different occasions. Most recently I have received notices of non-selection on Position Number 23894, 10785 and 12748.. The selectees were all Caucasian.
>
> I believe I am being discriminated against because of my race in violation of Title VII of the Civil Rights Act of 1964, as amended."(Exhibit A1)

On June 16, 1997, I conducted a sworn, taped interview with Officer Campbell.

> Mr. Campbell stated he has applied for promotion on numerous occasions and has been denied every time.

Ms. Rolle stated she and the deputy circuit administrator are both black.

Ms. Rolle stated Mr. Campbell did not make the top three to be recommended to the promotional authority. Ms. Rolle stated the promotional authority is the Director of Community Corrections, Mrs. Haley, in conjunction with the Regional Director, Mr. Berry. (Exhibit A5)

On August 1, 1997, I conducted a sworn, taped interview with Joyce Haley, the Director of Community Corrections Region IV.

Ms. Haley reported that Mr. Campbell's allegation that the three positions listed in his complaint were filled by Caucasians, is not true.

Ms. Haley reported Brenda Everett, a black female was promoted to position number 12748.

Ms. Haley was asked to explain her role in the promotion process.

Ms. Haley stated when the top three applicants are submitted to her, she reviews their personnel file and selects one. Ms. Haley stated she normally asks the circuit administrator, of the three, which one do they think is the best.

Ms. Haley stated Mr. Campbell was not among the top three canidates for the positions menticned in his complaint.

Ms. Haley stated unless Mr. Campbell was among the top three he would not be considered for promotion. (Exhibit A6)

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EEOC CHARGE # 150972673
Page 7

Signature: _____ 8/11/97
Correctional Officer Senior Inspector — Date

Reviewed by: _____ 8/11/97
Regional Inspector Supervisor — Date

FOR

_____ 8/22/97
Chief Inspector — Date

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Q. When you say you requested education, from whom did you request it? Explain what you mean by that.
A. I requested application from another college.
Q. I am sorry, I thought you said education, you requested a application. You changed your mind.
Was there any reason you changed your mind on seeking that Doctorate Degree?
A. It was expensive, and the Department of Corrections didn't approve waivers.
Q. What do you mean by waivers for the program?
A. Department of Corrections at that time had tuition waivers, you could use tuition waivers to attend graduate school or undergraduate school to obtain a degree or take additional courses.
Q. Okay. At the time you filled out this application, was there any indication from what was advertised in the position that you did or did not meet the minimum qualifications?
A. No.
Q. Let me say it for the record, meaning you were qualified for the position that was advertised, the Payton position?
A. Yes, I was.
Q. Mr. Campbell, have you ever had an opportunity to review any other of the applications that were submitted

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for that position?
A. Yes, I did.
Q. And what applications had you reviewed?
A. I reviewed Mr. Payton's position, the candidate chosen for that position.
Q. When did you review Mr. Payton's position -- application?
A. It was after I filed my EEOC.
Q. Okay. Mr. Campbell, I am showing you a document for identification purposes marked as Plaintiff's Exhibit 20. Would you look at that document, please?
A. Yes.
Q. Can you tell the jury what that document is?
A. Alan Payton's application for position 23894.
Q. And that is the same application that you reviewed after you filed your EEOC complaint in May, '97?
A. Yes.
Q. Mr. Campbell --
THE COURT: Counsel --
MR. FAZIO: You are right, I am sorry.
At this time, Your Honor, we would like to move to admit Plaintiff's Exhibit 20.
THE COURT: Is there any objection?
MS. FIELD: No objection.
THE COURT: Plaintiff's 20 received into evidence

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without objection.
(Plaintiff's Exhibit 20 was received in evidence without objection.)
BY MR. FAZIO:
Q. Mr. Campbell, on the Payton application, can you look down the area where it lists college, university or professional school and tell me what you see as the degree for Mr. Payton?
A. Mr. Payton has Bachelor of Science Degree, indicating that he received in 8/1988.
Q. Is there any degrees higher than Bachelor of Science degree on there?
A. No.
MR. FAZIO: May I approach the witness?
THE COURT: Yes. You don't need to ask, that is perfectly okay.
BY MR. FAZIO:
Q. The reason I hand you Plaintiff's 19, I wanted to compare the documents. Can you show me On plaintiff's 19 the area -- or can you tell me what it states in the area where it lists your prior work experience, how far back it states your work with the Department of Corrections goes?
A. Mine indicates since June 6, '83.
Q. Okay. And can you look at Plaintiff's Exhibit 20, Mr. Payton's position, and tell me how far back

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Mr. Payton's employment with the Department of Corrections goes?
A. November, 1988.
Q. So you had been there over five years longer than Mr. Payton at the time?
A. Yes.
Q. Are there any other areas in these applications that you feel show that you have superior qualifications for the position than Mr. Payton?
A. Mr. Payton has -- his evaluation 4/96, 12/94, and 11/93 all indicates one, four, the six meets standard, 12/94 indicates achieve standard, and 11/93 indicates achieved standard.
Q. And for the record, so the jury can understand when they look at this, what page and what area of the document are you looking at when you are reading from there?
A. Page two.
Q. Is that the bottom where it says performance appraisals?
A. Yes.
Q. And Mr. Payton's overall ratings that are listed from there, those are written down directly from his performance appraisals?
A. That is what Mr. Payton wrote, yes.
Q. That is what he wrote.

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19 and Defendant's Exhibit 31. Those are -- that is Plaintiff's copy of the Payton application, and Defendant's copy of the Payton application.

A. Yes.

Q. And those are the ones we went through yesterday?

A. Yes.

Q. Okay. Mr. Strach's application, which was Plaintiff's Exhibit 18, where did you obtain that one?

A. Mr. Strach's personnel file.

Q. Okay. Were you ever able to obtain your application for the position?

A. No.

Q. The copy that we have as the exhibit of your application for the Payton position, do you know where that was obtained?

A. From the Defendant's exhibits.

Q. Okay. As far as your application for the Payton position, and application for the Strach position, were you ever able to find those in your personnel file?

MS. FIELD: Objection; asked and answered, cumulative.

THE COURT: Sustained. Let's go ahead.

BY MR. FAZIO:

Q. Okay. Mr. Campbell, were you -- when you looked at the last page there -- I am sorry, page 12, and we are back

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on Exhibit 50 -- I am sorry, Defendant's Exhibit 30, those are the promotional policies. Can you please read Section N to the jury? And just read -- actually, let me scratch that back. Let me ask counsel real quick.

Let's go to section P, Mr. Campbell, can you go ahead and read that for the jury.

A. Documentation must be retained for the period of time as designated in the records and retention schedule of the Department of State unless selection process is in litigation or a complaint remains unresolved which require documentation to be maintained until resolution is reached.

Q. Okay. What is your understanding of that as it applies to the applications?

A. That --

MS. FIELD: Objection; lack of qualifications.

MR. FAZIO: Withdrawn.

THE COURT: All right.

BY MR. FAZIO:

Q. Mr. Campbell, I want to do this to clarify for the jury, I have handed you Plaintiff's Exhibit 19, which is your application for the Payton position. Is that the one that you refer to that we obtain from the Defendant?

A. Yes.

Q. Okay. Mr. Campbell, after the Strach interviews, I should say the Strach interview you did in September, 1996,

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what was done -- let me ask you this, who received the promotion?

A. Mr. Strach.

Q. Do you know how long Mr. Strach held that position?

A. Not exactly.

Q. What was your recollection how long he held that promotion?

A. It was a few months.

Q. And what happened? Why was it only a few months?

MS. FIELD: Objection, Your Honor; relevance.

THE COURT: I don't know if it is relevant. I will entertain a motion to strike if it is not relevant. You may go ahead.

BY MR. FAZIO:

Q. You may answer.

A. The question again, please?

Q. Why was it that Mr. Strach only held the position for a few months; if you know?

A. He was reprimanded and demoted.

Q. Why was he reprimanded and demoted?

MS. FIELD: Same objection.

THE COURT: The objection?

MS. FIELD: Relevance.

THE COURT: Overruled.

THE WITNESS: Because he violated the Department

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policy prior to him being promoted.

BY MR. FAZIO:

Q. After Mr. Stroke was demoted, what happened to the position?

MS. FIELD: Objection; relevance, hearsay, lack of predicate.

THE COURT: I will permit the witness to answer if he knows of his own personal knowledge.

THE WITNESS: The position was re-advertised.

BY MR. FAZIO:

Q. Okay. And what -- when you say re-advertised, did you apply for the position?

A. Yes.

Q. And what did you do? Did you submit a new application?

A. Yes.

Q. And what did you do after that?

A. An interview.

Q. There was a second interview for the Strach position that you did.

A. Yes.

Q. Was it the same panel as the first interview?

A. I don't remember the panel exactly, but I knew Mrs. Johnson wasn't on that panel.

THE COURT: Was, or was not?

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Q. That is almost two years after you filed the EEOC complaint in May, '97.
Yes?
A. Yes.
Q. Okay. When you say they knew, did you ever hear any statements from anyone in management indicating that your case was dismissed?
A. No. No one ever spoke to me about it.
Q. Did you ever hear any statements, whether they spoke to you, but you heard them say, anyone in management indicating that they knew your case was dismissed?
MS. FIELD: Objection, Your Honor; relevance.
THE COURT: No. I will permit that. You may answer that question.
THE WITNESS: At the morning of the deposition, I heard Mr. Harper, he was standing outside, and they were talking and they said Mr. Campbell's claim was dismissed.
BY MR. FAZIO:
Q. Do you have any knowledge as to whether Barry Groves knew your claim was dismissed.
MS. FIELD: Objection; relevance.
THE COURT: Overruled.
THE WITNESS: He is a part of management, I am sure he was aware of it.
THE COURT: But I think, Mr. Campbell, do you

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have any specific knowledge that Mr. Groves knew that? Have you heard Mr. Groves, or did you hear him say anything that would have indicated to you he knew about it?
THE WITNESS: No, he never said anything to me.
BY MR. FAZIO:
Q. I am not asking if he ever said it to you, did you hear Mr. Groves make a statement about your case being dismissed or anything like that?
A. Yes, I heard statements by other employees.
Q. By other employees as to what Mr. Groves said?
A. Yes.
Q. Okay.
MS. FIELD: Move to strike as hearsay.
THE COURT: Well, we haven't gotten into that. Let's go ahead.
BY MR. FAZIO:
Q. What other employees did you hear this from?
A. From my office. I worked at the Pompano office.
Q. What positions were the employees? Was it a supervisor, manager?
A. She was a supervisor.
Q. And who is this?
A. Diane Knight.
Q. And what did she tell you?

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MS. FIELD: Objection; hearsay.
THE COURT: I sustain the objection.
BY MR. FAZIO:
Q. Was Ms. Knight the only one who told you she heard a comment from Mr. Groves.
MS. FIELD: Objection to the comment; leading.
THE COURT: We want to have a good record in this case for all parties, and here is the problem: The reporter can only take down one person at a time, it is very important. If there is an objection, I need to have everyone else stop so I could make a ruling on the objection.
That gets very, very difficult. Let me go back to Mr. Fazio so he may pose the next question.
BY MR. FAZIO:
Q. Mr. Campbell, was there, aside from a statement, was there every anything that Mr. Groves did that indicated to you that he knew that your case was dismissed.
MS. FIELD: Objection --
THE COURT: You can answer that yes or no.
THE WITNESS: Didn't think it did.
BY MR. FAZIO:
Q. Well, that is a different question. Any gesture or anything -- other than what Ms. Knight said, you are not aware of anything else?

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MS. FIELD: Objection to the form of the question with respect to Ms. Knight; hearsay.
THE COURT: I will permit that. Let's go ahead.
THE WITNESS: Other than Ms. Knight, Mr. Lexima indicated to me he heard it was dismissed.
BY MR. FAZIO:
Q. All right. Going to Mr. Lexima, he was your supervisor in 1999?
A. Yes, he was.
Q. Did he do your performance reviews?
A. Yes, he did.
MR. FAZIO: Your Honor, if I may at this time, I would like to go with the performance reviews we have from '94 to '99 to identify.
THE COURT: All right.
BY MR. FAZIO:
Q. Mr. Campbell, I am handing you Plaintiff's 30 through 35. I would like you to look at those one by one and make sure you recognize each of those documents.
THE COURT: Maybe to save everybody time, can the parties agree those are the performance evaluations. These are 30 through 35.
MS. FIELD: All with the exception of 30, we would proffer and stipulate.
THE COURT: We are dealing with 33, 34, 35, 32.

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office?
A. No.
Q. Does that change your answer that you were't given a chance to respond to the information in the attachment to the performance review?
MS. FIELD: Objection, Your Honor; leading.
THE COURT: Overruled.
BY MR. FAZIO:
Q. You may answer.
A. Yes.
Q. Mr. Campbell, I am handing you what is marked for identification purposes Plaintiff's Exhibit 44. Can you review that document quickly and identify the document for the jury?
A. Yes.
Q. What is that?
A. My response dated 9/12/2000.
Q. Is that the response you refer to, memorandum you sent to the personnel and circuit office?
A. Yes.
MR. FAZIO: At this time Plaintiff moves 44 into evidence.
THE COURT: Any objection to Plaintiff's 44?
MS. FIELD: Yes, Your Honor; relevance, authenticity, hearsay and non compliance with discovery

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rules.
THE COURT: Are you saying you didn't see this before today?
MS. FIELD: I am saying we first saw it July 11, and asked for it in November.
THE COURT: Okay. I am going to overrule the objection. What is this number?
MR. FAZIO: Plaintiff's 44.
THE COURT: Plaintiff's 44 received into evidence over objection.
(Plaintiff's Exhibit 44 received in evidence over objection.)
BY MR. FAZIO:
Q. That letter -- can you identify who you sent the letter to, Mr. Campbell?
A. I sent one to the circuit office, and one to personnel. I didn't send any else, CC or anything else.
Q. Can you identify the names of the persons that you directed that to?
A. John B. Edwards and Donald Monroe.
Q. And what were their positions?
A. Correctional senior administrator, and correctional deputy administrator.
Q. You can also state down at the bottom -- can you go through the bottom four names if you want of the person you

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CC'd this to?
A. It was only CC's to Mr. Stillson's office, personnel.
Q. What are the names stated there? Why are they on there?
A. I intended to send a copy to Judge Hurley, secretary of the Department of Correction, Mr. Head and Mr. Harper, and the Defendant attorney at the time, Ms. Curd, but I didn't want to waste my stamps sending it out, sent it to the Department only.
Q. Only to Mr. Stillson?
A. And the circuit office.
Q. Who was in the circuit office at the time?
A. Mr. Monroe and Mr. Edwards.
Q. Did you ever receive a response from either Mr. Monroe or Mr. Edwards?
A. No.
Q. Did you ever receive a response from Mr. Stillson in the personnel office?
A. No.
Q. Mr. Campbell, now we are in September, 2000, and the only thing I wanted to get into after this was, we've gone into the area of your performance review. During this time had you applied for any promotions?
A. Yes.
Q. Okay. After your case was dismissed, did you apply

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for any promotions?
A. Yes.
Q. When was the next promotion you applied for after your case was dismissed in February the 9th?
A. I applied for a promotion on, I think October, '99 and March of 2000.
Q. Okay.
A. And March of 2001, and November -- no, October, 2000, October of '99, February of 2001, and April of 2001.
Q. Okay. Let's go to October, '99 application. What position did you apply for then?
A. Position 900252.
Q. Okay. Who received the position?
MS. FIELD: Objection; hearsay, lack of predicate.
THE COURT: Sustained, unless, unless Mr. Campbell actually saw the person doing the job, and can testify of his own personal knowledge who had the job.
BY MR. FAZIO:
Q. Let me ask you this: Did you ever review any documents that indicated to whom the position was given?
A. Yes.
Q. Was there only one position in October, '99?
A. I discovered later that it was a batch position.
Q. Let's go first to your own application. Mr. Campbell,

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I am handing you what is marked for identification purposes Plaintiff's Exhibit 16. Can you tell me if you have seen that document before, and if you have, can you identify it?

A. Yes, application 900252.

Q. And that is the October, '99 position you referred to?

A. Yes.

Q. Did you ever receive a response from the Department in response to that application?

A. No.

Q. When you have applied before, did you receive responses when you didn't receive positions?

A. Yes.

Q. And what is your understanding of the rules as far as the Department rules when you apply for a position and their response to you?

MS. FIELD: Objection; lack of predicate, hearsay.

THE COURT: What is the question again?

BY MR. FAZIO:

Q. Mr. Campbell, when you reviewed the promotional policies that we went into Defendant's Exhibit 30, I believe, and you said you reviewed it before, did you ever come across any part of the policy that had to do with the Department's procedures for notifying someone when they applied for a position and didn't get it?

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A. Yes.

Q. And what was the procedure that you reviewed?

A. Employee would receive a response from personnel within 45 days of the position being filled.

Q. Okay. Let me ask you, for all of the positions you applied for when you didn't get them, did you receive notification from the Department for each one?

MS. FIELD: Objection; compound, vague.

THE COURT: Overruled.

BY MR. FAZIO:

Q. You may answer.

A. Yes.

Q. So every time you applied, you received -- I am asking you -- let me say this: Up until this time is what you are saying, up until October, '99, you always received notification when you applied for a position and didn't get it?

A. Yes.

Q. After the October, '99 application that you submitted, did you receive any notification in response to that position?

A. No.

Q. Okay. When you -- let me ask you this: When is the first time you are aware those positions, the batch positions, as you say, were given to anyone?

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A. I tried to investigate several times, and they indicated that there is no such position as 900252.

Q. And when you say they indicated that, who indicated that?

A. Personnel office.

Q. And they said there are no such positions for that number?

MS. FIELD: Objection, Your Honor. Hearsay in the absence of identifying the person.

THE COURT: Sustained.

BY MR. FAZIO:

Q. Who in the personnel office told you that?

A. I contacted Mr. Stillson's secretary at one time, her name is Bernadette, and she tried to put the number in the computer, and she said is not there, she can't find it.

MS. FIELD: Objection, Your Honor; hearsay.

THE COURT: Right. I sustain the objection.

BY MR. FAZIO:

Q. Did you ever speak to anyone in the personnel office other than Mr. Stillson's secretary?

A. Yes.

Q. Who? When I say speak, did you write a letter or receive a document from them on that subject?

A. I went to the personnel office one time and I spoke to, I think her name is Lakita, I don't remember the last

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name. And she also tried to input the number and the number did not come up because it was a batch number for different positions.

MS. FIELD: Objection, Your Honor; hearsay.

THE COURT: Right. I sustain the objection.

BY MR. FAZIO:

Q. Mr. Campbell, I have handed you what have been marked for identification purposes as Plaintiff's Exhibits 92, 93, and 94. Can you review those documents and if you recognize them, identify them for the jury?

A. These are the three successful candidates for the batch position 900252.

MR. FAZIO: At this time the Plaintiff would like to admit Plaintiff's 92, 93, 94 into evidence.

THE COURT: Any objection to the receipt of Plaintiff's 92, 93, and 94?

MS. FIELD: Yes, Your Honor.

THE COURT: Legal basis?

MS. FIELD: Authenticity, hearsay, non compliance with discovery rules.

THE COURT: I will sustain the objection and allow counsel to establish these are the legitimate records of Department of Corrections.

BY MR. FAZIO:

Q. Mr. Campbell, how did you obtain these documents?

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A. Personnel.
Q. When you say personnel, you went to the personnel office?
A. Went to the personnel office and reviewed the three personnel files.
Q. On the top page here, this is where it says personnel file, medical confidential file review request. Is that your name right there where you are requesting the information on the individual?
A. Yes.
Q. Down there at the bottom, the signature there, personnel staff member, is that the signature of the person who let you see the documents?
A. Yes, except she put the wrong date on the bottom.
Q. What was the date she put?
A. 6/13, and the date was 7/13/01.
Q. The date was July 13, 2001 instead of June 13, 2001?
A. Yes.
Q. And what is the name of the individual?
A. M. B-o-C-H-A-M-P.
Q. M. Bochamp?
A. Yes.
Q. Is there any way to get the documents other than going to personnel and making request for the documents?
A. No.

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Q. Did she stand there with you and watch you while you reviewed the documents?
A. Yes, and she copied them also.
Q. And this was done the same way when you have gone to personnel and obtained documents at other times?
A. Yes.
Q. Okay. Each of those 92, 93, 94, are personnel file remember questions is with the attached information on specific individuals?
A. Yes.
Q. How did you find out the names of the individual to request the information?
A. After I tried to get it myself through the personnel office and with negative response, I remembered the fact that the position was located at BCI.
Q. What is BCI?
A. Broward Correctional Institution.
Q. And what did you do next?
A. I called and spoke to the administration office about 900252, and spoke to someone in administration, her name was Linda.
Q. And when you say administration, which administration office?
A. BCI.
Q. Okay. Go ahead.

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A. She took my information and indicated that the information --
MS. FIELD: Objection; hearsay.
THE COURT: I am admitting this for the predicate to establish whether these are authentic documents.
THE WITNESS: She indicated the information on the officers are confidential, but I reviewed the D.C. Web site and went to the BCI administration section and that is how I found out the name of the three applicants for the position. That was correctional services administrator at that institution.
After I discover the name, I proceeded to personnel office, didn't know who was put into 90025, and reviewed the three personnel files. When I reviewed the application, one of the applicants, Mr. Thornton, James Thornton, he had no position number -- he had position number 900252 on his application.
Also Mr. Lawrence, Charles Lawrence, also had the same position number, 900252, on his application.
MS. FIELD: Your Honor, the witness is testifying about documents not in evidence.
THE COURT: Right. I think what we are looking at is trying to figure out are these authentic documents, and the testimony is he went and got them from the personnel department at the Department of Corrections.

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MS. FIELD: That is his testimony.
THE COURT: Okay. Can I see one of those documents, please?
I am overruling the objection. I will receive these three exhibits into evidence over objection, relying on Federal Rule of Evidence 902, Subsection 2.
MS. FIELD: Does that obviate the hearsay exception on business exceptions as well?
THE COURT: I made my ruling. Let us proceed. Give me the exhibit numbers again, if you would, please.
MR. FAZIO: Plaintiff's Exhibit 92, 93, 94.
THE COURT: Each of those exhibits are in evidence over objection. You may proceed.
(Plaintiff's Exhibits 92, 93 and 94 were received in evidence over objection.)
BY MR. FAZIO:
Q. Mr. Campbell, if you turn to the second page in Exhibit 92, it is dated, I believe, March 2nd, 2000.
A. Yes.
Q. Is that a letter from Mr. Stillson to the applicant, Mr. Lawrence?
A. Mr. Stillson's name at the bottom signed by Mona for Mr. Stillson, yes.
Q. Okay. The name on the letter is Mr. Stillson, and

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what date does it advise as to the receipt of the promotion to the position?

A. Effective March 3, 2000.

Q. Okay. Could you go to '93 -- Exhibit 93?

A. Yes, August 11, 2000.

Q. Okay. That advised that the position, promotion to the position is effective August 11, 2000?

A. Yes.

Q. And that is for the position you applied for in October, '99?

A. Yes.

Q. Okay. Can you go to the last one, number 94?

A. March 3, 2000.

Q. March 3, 2000 was the date that the person was promoted to the position?

A. Yes.

Q. Okay. Was there any notification that you received or any publication in your office as to any of these individuals receiving these positions?

A. No.

Q. So the first time you found out who received -- that people received these positions was when you went to look at the records in the personnel office?

A. Yes.

Q. And what date was that?

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A. July 13, 2001.

Q. Okay. And this may be obvious already, but did you ever interview for that position?

A. No.

Q. Okay. You never were advised when there would be any interviews?

A. No.

Q. You never received any response from the Department in response to your application?

A. No.

Q. Mr. Campbell, after the October, '99 position, you stated you also applied for a position in March, 2000?

A. Yes.

Q. And what was the response when you applied for that position?

A. Nothing. Application was mailed to Tallahassee, and no response.

Q. Were you ever advised as to whether you received that position or not?

A. No.

Q. Were you ever advised by anyone as to we gave the position to someone else?

A. No.

Q. When was the next position you applied for?

A. There was another one on October 4, 2000.

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Q. Okay. And the position that you applied for October 4, 2000?

A. 05 something.

Q. Did you receive that position?

A. No.

Q. Did you ever find out whether that position went to someone else?

A. No.

Q. What response did you receive from the Department in response to your application for the position?

A. I received a letter dated October 5, 2001, October 5, 2000, indicating that my application was late, would not be considered.

Q. And what date did you submit your application?

A. October 4. Faxed it October 4.

Q. Was that a process that was permitted, for you to fax your application?

A. Yes. It was going to Tallahassee, yes.

Q. And you were told it was received late?

A. Yes.

Q. Did you believe that you faxed it late?

A. No.

Q. Do you know what time you faxed the application to them?

A. Not exactly, but it was faxed October 4.

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Q. Was October 4 the deadline for receipt of the application?

A. Yes.

Q. Okay. What would the time be for the receipt of the application?

A. Five p.m.

Q. Did you fax it before five p.m.?

A. Yes, I faxed it twice, also.

Q. Okay. Let me ask you, after the October 4, 2000 position, what was the next position you applied for?

A. Applied for position in 2001, February, 2001.

Q. All right. And do you know what it was that you applied for at that time?

A. That was three positions. Three separate applications, correctional probation specialist in Dade County.

Q. All right. Was that -- I am sorry, did you say that was February, 2001?

A. Sometime, February, March or April.

Q. Okay. What response did you receive to your applications for those positions?

A. Two responses were the position was canceled and one, there was an interview set up.

Q. One, there was an interview set up?

A. Yes.

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Q. Did you go to the interview for that one?
A. No.
Q. Did you interview for any of those positions?
A. No.
Q. Why didn't you interview?
A. Two was canceled, and the third one -- there were four positions advertising Broward County. At the time I applied for the position, there was no position in Broward County. I applied in Dade County, because the fourth position was for Broward County. I waived the interview in Dade County.
Q. You thought it would be better, you would get a position in Broward County?
MS. FIELD: Objection; leading.
THE COURT: Sustained.
BY MR. FAZIO:
Q. What was your preference?
A. I prefer to work in Broward County.
Q. Where did you reside?
A. Broward.
Q. The positions that said were canceled, did you ever find out whether those positions were given to someone else?
MS. FIELD: Objection; hearsay, lack of predicate.

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THE COURT: Sustained.
BY MR. FAZIO:
Q. Did you ever review any documents that showed whether those positions were given to someone else?
A. Yes.
Q. And what document did you review?
A. I looked at the Department computer that they supplied us, and I looked at PP09, which is probation officer information section. Along with the position number you put PP09, zero, position number, and it would tell you who the position was given to, or the date the person was put in that position.
Q. And what did it tell you with regard to those two positions that were supposedly canceled?
MS. FIELD: Objection; hearsay.
THE COURT: Sustained.
BY MR. FAZIO:
Q. Mr. Campbell, from your review of the Department computer records, did you obtain any information that you were able to, from what you were able to discern whether the positions had been canceled?
MS. FIELD: Objection; hearsay.
THE COURT: Sustained.
BY MR. FAZIO:
Q. Mr. Campbell, I am handing you Plaintiff's 10-G, and

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10-G-1. Will you look at those documents, please, and if you recognize them, can you identify them for the jury?
A. One is a letter dated March 30, 2001 for position 21133. A letter from personnel, there is no signature on the bottom.
Q. And what is the other, 10-G-1?
A. A computer printout from the probation information, probation officer information log or computer.
MR. FAZIO: At this time the Plaintiff would move to admit 10-G, and 10-G-1.
THE COURT: Any objection to the receipt of Plaintiff's Exhibits 10-G and 10-G-1?
MS. FIELD: Yes, Your Honor, counsel would ask --
THE COURT: Could I see 10-G and 10-G-1 so I see what the lawyers are talking about?
What is the legal basis of the objection?
MS. FIELD: Relevance, hearsay, authenticity, not timely disclosed, violation of The Court's trial orders and discovery orders and the rules of professional conduct code regulating the Florida Bar.
THE COURT: Thank you. Thank you.
MR. FAZIO: Plaintiff will respond when you are ready, Your Honor.
THE COURT: That is all right.
I overrule the objection with respect to

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Plaintiff's Exhibit 10-G. And you need to establish what 10-G-1 is so that I can understand where it was obtained from. And this is a computer printout, and I think I need to know more about it.
The other one, I will overrule and receive 10-G into evidence over objection.
(Plaintiff's Exhibit 10-G was received in evidence over objection.)
BY MR. FAZIO:
Q. Mr. Campbell, if you could look at 10-G-1, can you explain, that is a computer printout, can you explain how that document is printed out and what the information that the tracking information shows, not with regard to the substance --
THE COURT: Let me stop you for a minute. There is a more fundamental issue. Whose computer is it?
BY MR. FAZIO:
Q. Can you explain where you obtained this printout?
A. My computer at the probation office.
Q. Your computer at the probation office?
A. Where I work.
Q. And that is a Department computer?
A. Yes.
Q. Is there any information on there which shows -- establishes tracking information which shows it came from

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your computer?
A. Yes, it has my I.D. number.
Q. And what number is that on there?
A. P1709Q7.
Q. And is there any way you would be able to access that information from your own personal computer at home?
A. No.
Q. Are the records that are there on the Department computers, I guess available for employees to print out from their own computers in the office?
A. Yes.
Q. There is no secret passwords or things you have to get which would prohibit you from doing that from your desk?
A. We are issued a passport.
Q. Is that within your authorization, then, within your position to obtain that information from the computer?
A. Yes.
THE COURT: I will overrule the objection that has been lodged to this exhibit. I am relying on Brown versus Town of Chapel Hill, 79 Fd.3rd, 1141.
10-G-1 is in evidence over objection. You may proceed.
(Plaintiff's Exhibit 10-G-1 was received in evidence over objection.)

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BY MR. FAZIO:
Q. Mr. Campbell, can you tell the jury what 10-G states with regard to the position for which you applied in, it appears it was March 30, 2001 -- I am sorry, the date that was sent out was March 30, 2001?
A. The position was assigned 4/13/2001.
Q. No, look at 10-G.
A. Okay.
Q. Can you tell the jury -- first, how did you receive that document?
A. From personnel. It was mailed to my residence.
Q. And was that your first notification that you didn't receive the position?
A. Yes.
Q. And what does it say as to why you didn't receive the position?
THE COURT: Well, let me stop you for a second. What position are we talking about?
BY MR. FAZIO:
Q. Can you identify, Mr. Campbell, what position this was you applied for?
A. 21133.
Q. And the date of the letter notifying you that you didn't receive the position, can you state that?
A. March 30, 2001.

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Q. Is that one of the positions you just referred to for which you had applied and you were told two of them were canceled?
A. Yes.
Q. Okay. What does this document state why you did not receive the promotion?
A. Indicates position had been canceled.
Q. Okay. Now, when you went to the computer and entered the information with response to that position, what information did you find?
A. The position was assigned on 4/13/2001.
Q. The position was assigned April 13, 2001?
A. Yes.
Q. Okay. Were you ever -- did you ever receive any notification, then, after the letter March 30, 2001 that the position had been assigned to someone?
A. No.
Q. The Department never notified you with any -- either verbally or in writing?
A. No.
THE COURT: Mr. Campbell, could you give me the date again relying on the computer printout you were told that the position had been assigned? What date was that?
THE WITNESS: 4/13 --
THE COURT: April 13, 2001?

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THE WITNESS: Yes, Your Honor.
THE COURT: Thank you. Back to Mr. Fazio.
BY MR. FAZIO:
Q. So, April 13, 2001 you found that record on the computer, and shows that the position was assigned to someone else?
A. Yes.
Q. All right. Mr. Campbell, as we --
A. The date I printed out was 4/25/2001, the position was assigned 4/13/2001.
MR. FAZIO: Your Honor, did you understand?
THE COURT: Yes.
BY MR. FAZIO:
Q. Okay. When -- you have been going through this since your case was dismissed. How has your -- how has the work place been for you as far as your ability to get along with management in your day-to-day activities?
A. When Mr. Groves left the circuit office, before he went to Tallahassee, he wouldn't speak. Mr. Rogatz the same way.
Q. When you say wouldn't speak?
A. Just see me face-to-face and just pass by like I don't exist.
Q. What about, have you noticed any difference in the way you are treated by co-workers.

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show that Mr. Campbell was retaliated against, but those who he alleges were retaliating would have motive or intent to do so.

THE COURT: I will allow you to pursue this if you can show that a decision maker who was a decision maker regarding Mr. Campbell engaged in prohibited conduct as to Ms. Tunnage, but you have to establish that it is the same person. And I say that, otherwise we are getting out of the issues that we are trying to deal with in this particular case.

You need to lay that predicate.

BY MR. FAZIO:

Q. Who were the hiring authorities when you were there in 1996 at the Department of Corrections?

A. Mrs. Haley, Mr. Harper, Gary Rogatz, and Barry Groves.

Q. They have decisions to hire and fire?

A. Yes.

Q. And when you were in the Department of Corrections in July, 1996, what was your position?

A. A senior supervisor.

Q. Do you recall the interview for the position 23894 on which you were one of the panelists?

A. Yes, sir.

Q. And that was July, 1996, and the person that was given the promotion was Alan Payton?

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A. Yes, sir.

THE COURT: Wait a minute. You need to slow down. And I know you are rushed for time, there is information you are eliciting we need to get into the record. You haven't established that the witness even worked for the Department of Corrections, or when she worked, and what she did. You need to do that.

BY MR. FAZIO:

Q. Ms. Tunnage, how long did you work for the Department of Corrections?

A. Close to 13 years.

Q. When did you leave the Department of Corrections?

A. February, 1999.

Q. And in July, 1996 --

A. I am sorry, I made an error. My resignation letter was submitted in February, and last day of employment was in March.

THE COURT: What year was that?

THE WITNESS: 1999.

THE COURT: Thank you.

BY MR. FAZIO:

Q. What was your position at the time you resigned?

A. I had been demoted to a specialist.

Q. And what was your position in July, 1996?

A. A senior manager, senior supervisor.

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Q. What location did you work in? What was your office?

A. I worked in two different locations, 17-7 on Broward Boulevard, and 17-5, just off of Sunrise Boulevard, and 9th Avenue.

Q. July, 1996 had you ever sat on a panel as an interviewer?

A. Yes.

Q. How many times?

A. A number of times.

Q. Do you recall the interviews that were conducted for this position that eventually went to Alan Payton?

A. Yes, sir.

Q. Do you recall who was on the panel with you?

THE COURT: What is the position we are talking about, and how is it designated and so on?

MR. FAZIO: The position is 23894, this is what we have been referring to as the Payton position, Your Honor.

THE COURT: Thank you.

BY MR. FAZIO:

Q. Do you recall who was on the panel with you?

A. Mr. Rogatz -- excuse me, Mr. Groves and Diana Woolslair.

Q. Do you recall there is more than one --

THE COURT: Ma'am, is this a position you applied

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for, or were you a member of the interviewing panel?

THE WITNESS: It was a position I was a member of the panel of the people who were applying for the position.

THE COURT: Thank you very much.

BY MR. FAZIO:

Q. Do you recall who was considered the chairman of the panel?

A. Mr. Groves.

Q. And that is Barry Groves?

A. Yes, sir.

Q. And I think I just asked you, do you recall there were more than one set of interviews conducted for that position?

A. Yes, sir.

Q. And were you present on the second set of interviews on the panel as well?

A. Yes, sir, I was.

Q. Who were the other panelists?

A. Also Mr. Groves and Ms. Woolslair.

Q. Was Gary Rogatz on either of the panels you sat on for that position?

A. No, sir.

Q. Was he involved in any way in the selection, in the screening of the applicants -- excuse me, interviews and

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Q. Okay. You also spoke to Ms. Field about times where you are dissatisfied with the fact that your pay wasn't increasing, you would try to supplement your pay by getting part-time employment. What do you mean by that?
A. I would seek part-time employment with other agencies.
Q. Were you able to get part-time employment?
A. Yes, I worked at Covenant House, Archway, I was a soccer couch at Ely High.
Q. What high school?
A. Ely High.
Q. And you were able to receive some supplement to your income from those positions?
A. Yes.
Q. Did you ever do any work on your own, self employment part-time?
A. Yes, income taxes.
Q. For whom -- you are saying you actually prepare income tax returns for people?
A. Yes, for friends, yes.
Q. And they pay you for that?
A. Some do, some don't.
Q. Well, the ones that pay you, it is an arrangement you have, do you do their returns every year?
A. Yes.
Q. Let me ask you, when Ms. Field asked you about the

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documents that you thought should have been provided by the state but were not, you mentioned your application for the Strach position, and Mr. Strach's application for his position, and then also your application for the position 900252, which is the one you applied for in October, '99?
A. Yes.
Q. You stated that in March, 2000 you had an application that you made but you can't find that one?
A. No. I can't locate it, no.
Q. And I am not sure if Ms. Field did ask you this, I apologize if she did. Did you state whether you looked in your personnel file for the March, 2000 application?
A. It was mailed to Tallahassee.
Q. Do you know where that would be if you would get a copy of it?
A. Possibly Tallahassee.
Q. Did you ever request a copy of that?
A. No.
Q. Why not?
A. It has been -- I never requested a copy, just never did.
Q. Did you believe if you did request a copy, they would send it to you?
A. I can't say. Maybe they would or maybe they wouldn't.
Q. Let me ask this way, did you ever receive a response

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to your application for that position?
A. No.
Q. Never let you know one way or the other whether you got the position or not?
MS. FIELD: Objection; asked and answered.
THE COURT: I will permit it. Let's go ahead.
THE WITNESS: No.
BY MR. FAZIO:
Q. And even though I know we covered with the promotional policies and procedures, based on your understanding of that, are there separate rules for Tallahassee as to whether they are required to respond to let the applicants know whether they are to receive a promotion or not?
A. Yes, I had one response for the 10/2000 position.
THE COURT: The question, Mr. Campbell, do the same rules apply through the whole department, and would you expect they would apply in Tallahassee, too?
THE WITNESS: Yes, they would.
BY MR. FAZIO:
Q. You were also asked about a position that Ms. Field referred to as the Preston position, and I am not sure if that was covered -- that position was one you applied for on March or April of this year, 2001?
A. Yes.
Q. And were you able to interview for that position?

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A. No.
Q. Did you waive your interview?
A. No.
Q. Why weren't you able to interview for that position?
A. When I checked on the position, I think I received a letter saying it was canceled or something.
Q. And did you find out later whether that was given to someone else?
A. Yes, I did.
Q. And Mr. Preston was the person?
A. Yes, he was.
Q. Let me -- if you could explain to the jury, when the Department says the position is canceled, what does that mean as far as the way the applications are treated?
MS. FIELD: Objection, speculative.
THE COURT: Overruled.
If you know, sir, you may answer.
THE WITNESS: I don't know what they mean by cancel, indication of cancel. Maybe they got rid of the position, and no longer available to applicants.
BY MR. FAZIO:
Q. Do you have an understanding of the rules, whether they are required if they decide to have someone fill it as opposed to cancel it, whether they are required to allow people to apply for it, or interview for it?

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BY MS. FIELD:
Q. Effectively Joyce Haley terminated you?
MS. SAVOR: Objection; leading.
THE WITNESS: She gave me --
THE COURT: I will overrule that. You may proceed. I will give the citation to the evidence code in a minute. You can go ahead.
THE WITNESS: She gave me the opportunity to resign.
BY MR. FAZIO:
Q. Would you have resigned other than her forcing you to resign?
A. No.
Q. Let me ask, I don't think I asked you this: How long had you been employed with the Department of Corrections at the time you resigned?
A. Total time?
Q. Yes, sir.
A. 31 years.
Q. In your plans with your career at the Department of Corrections, is that the way you intended to leave?
A. No, sir.
Q. Had it been your intention to retire on your own accord?
A. Correct.

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Q. When you were the circuit administrator -- I should ask you that also, how long had you been employed as circuit administrator for region three?
A. I had been employed since January of '91 commencing in Broward County and then I was transferred to Dade County a year before I was terminated.
Q. Was the transfer to Dade County one that you requested?
A. One that Mrs. Haley and I mutually agreed to.
Q. When you say mutually agreed to, are you saying that she told you that you were going to be transferred, or you were requesting a transfer and that is how it came about?
A. She told me I was going to be transferred.
Q. Where -- you don't have to give me the address. What county do you reside in?
A. Do I --
Q. Pardon me. What county do you reside?
A. Dade County.
Q. Is the transfer to Dade County one that you wanted in order to be closer to your residence?
A. It was a county I was originally working in when I was first employed by the Department of Corrections as a probation officer, and one which I felt that I could work in until I retired.
Q. And so I understand you, when you say until you

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retired, when had you planned that to come about?
A. After I completed the draw program.
Q. And when would that have been?
A. It would have been a five year period.
Q. From what time?
A. I believe it commenced in 2000.
Q. So, if I understand you correctly, you would not have retired until the year 2005 or around that time?
A. Correct, correct.
Q. Mr. Rogatz, do you recall whether you were working under Joyce Haley as a circuit administrator in 1999?
A. Yes, I was.
Q. Let me ask you, do you know Donald Campbell, the Plaintiff?
A. Yes, I do.
Q. How long have you known Mr. Campbell?
A. Well, I started working as a circuit administrator in Broward County in '91, so it was probably during the year '91 that I met Mr. Campbell.
Q. In the time that you knew him, did you ever have any poor relationship with him or any conflict with him?
A. No.
Q. Are you aware Mister -- obviously now you are, but while you are still circuit administrator -- let me ask you this way --

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THE COURT: When was it you became aware Mr. Campbell filed a complaint of discrimination against the Department?
THE WITNESS: It was during the period that I was working as a circuit administrator in Broward County. I don't specifically know the exact time or date.
BY MS. FIELD:
Q. We've established through testimony and evidence already that Mr. Campbell filed the charge of discrimination in May of 1997, and that the Department through the office of the Inspector General had an investigation into his complaint thereafter.
Do you recall that time period being about right?
A. If that is what the testimony indicated, yes.
Q. Well, do you recall there was a time after Mr. Campbell filed the complaint of discrimination, charge of discrimination there was a lawsuit filed not only by Mr. Campbell but two other plaintiffs?
A. I am aware of that.
Q. You knew about the complaint of discrimination before they filed the lawsuit, correct?
A. I don't know, you know, if it was a result of the filing of the discrimination of the lawsuit, I don't -- I can't say one way or the other.
Q. Do you recall how you were advised there was a lawsuit

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filed?
A. It was brought to my attention. Exactly the way I determined it, I am not sure.
Q. Okay. The testimony that we've had establishes that the lawsuit was filed in early 1998. Does that meet with your recollection?
A. Possibly, yes.
Q. And were you aware that in that lawsuit, at least as far as Mr. Campbell was concerned, he was claiming that in two separate instances where he was denied a promotion, that the Department discriminated against him on the basis of race?
A. That is my understanding.
Q. And the promotions specifically that he was claiming were one that he applied for in July, '96 that went to a man named Alan Payton, and the other one he applied for in August, '96 that went to a man named Mark Strach.
MS. SAVOR: Objection; leading.
THE COURT: Overruled. For the record, I am relying on 611-C and the case of Ellis versus City of Chicago, 667 F.2d, 606.
You may proceed.
THE WITNESS: Could you repeat the question, sir?
BY MR. FAZIO:
Q. Were you aware the specific promotions that

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Mr. Campbell was claiming that he did not get were ones that went to Alan Payton around August, September, 1996, and Mark Strach after that same time, September, '96?
A. Correct.
Q. Was there a period of time in early 1999 when you were asked to sign an affidavit with regard to that lawsuit?
A. That's correct.
Q. And can you tell me who it was that asked you to sign that affidavit?
A. I am not exactly sure who exactly it was. I believe it was somebody who was investigating the case.
Q. Did you have an opportunity to speak with Joyce Haley about the fact that there -- the lawsuit -- excuse me, there had been a lawsuit filed by Mr. Campbell and the other two Plaintiffs?
A. Did I have an opportunity to speak to Ms. Haley about it?
Q. Yes. Prior to the time when you did this affidavit.
A. I don't believe so, no.
Q. Were you aware based on your contact with Ms. Haley whether she was aware of the lawsuit?
A. I am not sure if she was aware of it or not, because I never spoke to her. I don't think I ever spoke to her about it.
Q. All right. Do you have any reason to believe she

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would not have known about the lawsuit?
A. I have no reason to believe that she wouldn't, no.
Q. Within management in your region at that time, wasn't this lawsuit common knowledge?
MS. SAVOR: Objection; speculative.
THE COURT: I think the question is, not asking Mr. Rogatz to guess, but I think the question was, from his experience, what he saw and heard, did he feel that at least within the people that he dealt with in management in region three, did those folks indicate to you that they were aware of that lawsuit?
THE WITNESS: Correct.
MR. FAZIO: Thank you. That was a much better job than I did, Your Honor.
BY MR. FAZIO:
Q. At the time in 1996 when the applications, I should say the application process took place, did you ever sit on panels where you conducted interviews of the applicants?
A. I did several times.
Q. Did you sit on the -- either of the panels that interviewed the applicants for the Alan Payton position?
A. I don't believe so, no.
Q. Were you involved in any way with the screening or interviews of the applicants for the Alan Payton position?
A. I was involved with the screening of all the

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applicants ultimately.
Q. When you say you were involved with the screening of all of the applicants ultimately, how would that be?
A. Well, although I might not have been on the interview panel per se, after the interview panel made their recommendations, it would come to me first, and I would review the applicants to insure that there was no prior disciplinary action taken against the applicants so that they met the criteria for the position.
Q. When you say it would come to you first, you are saying before the positions -- before all those reporting to the panel?
A. No. After the panel had interviewed the applicants, the top three applicants would be submitted to me to be forwarded to Mrs. Haley. It was my position to review the applicants to insure that their personnel files were reviewed properly, to insure there was no prior disciplinary action taken against the applicants, at which point I would forward the recommendations to Mrs. Haley.
Q. And when you would review this, you are saying this is part of the procedure, the promotional procedure? Once the panel had made their decisions on the top three applicants and possibly the top one applicant out of who they chose, then it was your job under the promotional policies and procedures to then review them again to make sure, even

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A. Yes, only if there is -- they have another exception, if there is a lateral available, they would transfer the person to the position.

Q. And also you spoke about applications that were submitted for some other positions. I wanted to make sure, I didn't know if this was covered, were there any applications you submitted where you weren't notified that you qualified for the position?

A. There was another one, 900252.

Q. That was the October, '99?

A. Yes, October 20, '99.

Q. And that one you never received a response?

A. No, I didn't.

Q. Aside from the ones where they didn't notify you at all, were you ever told something to the effect, we received the application, but you don't meet the qualifications?

A. No. They didn't send me an application, no response to it. The promotional policy change, and after awhile it was based on points. And after the -- after it changed, and the case was dismissed, and the appeal came back, I think I applied for several positions, I think I set up for one or two interviews.

Q. When did the promotional policy change?

A. I think late '99 or 2000. Based on points and years

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of service, education. And interviews change from just leaving it to the panel discretion, they have to grade everyone based on points.

Q. Okay. Mr. Campbell, I am showing you what is marked for identification purposes Plaintiff's Exhibit 51. Can you tell me if you have seen that document before?

A. Yes.

Q. And what is that document?

A. The new promotional policy procedure.

Q. The ones we have been referring to already that were in effect at the time of the Strach and Payton positions, those promotional policies and procedures are replaced by the ones contained in that document?

A. Yes.

MR. FAZIO: At this time we move to admit Plaintiff's 51.

THE COURT: Any objection?

MS. FIELD: No, Your Honor.

THE COURT: Plaintiff's 51 in evidence without objection.

(Plaintiff's Exhibit 51 was received in evidence without objection.)

BY MR. FAZIO:

Q. Mr. Campbell, how did you obtain that copy there?

A. I think I first got a copy to Mr. Welborn, he faxed it

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to my residence.

Q. Did you request Mr. Welborn to give you that?

A. Yes.

Q. I see fax indication from Timothy Welborn, November 14, 2000. Is that the first time you saw this?

A. Yes.

Q. And did you review the document after receiving it?

A. Yes, I did.

Q. Is that how you were able to ascertain that the selection process now has specific points that are -- that correlate to the criteria that the panels are supposed to apply?

A. Yes, and with my qualifications, and the years of service, it would be really kind of hard if I obtain an interview for them to give me all the excuses I have been given. You don't have to interview questions, but the points would be there.

Q. Let me ask you this: You remember you heard Ms. Thornton testify yesterday when I was cross examining her about the criteria, and I went through education, performance, work history, and work experience, she said there was no particular weight that was supposed to be attached to any of those. If that is correct, is your understanding based on reading this, that is completely changed with the way it was supposed to be reviewed?

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A. Yes, it was changed June 16, 2000.

MR. FAZIO: Did we get the Elmo to work?

BY MR. FAZIO:

Q. Let me ask you, Mr. Campbell, to turn to page eight, section six there. That is where it says the selection of interviews. Is that the process -- designates the process that is supposed to apply.

A. Yes.

Q. And the servicing personnel office would be responsible for completing a promotional score sheet --

MR. FAZIO: Is that too far for the jury -- can anybody read it?

BY MR. FAZIO:

Q. All right. It says listing all qualified applicants for the vacancy and the number of points they are eligible to receive for education, work history, and training. Now, based on the policy, you would have been able to achieve a weighted, I guess, number, based on how they scored your education, work history and training?

A. Yes.

Q. Meaning that there wouldn't be any room for subjective interpretation of the panel members to say who was really better on one thing or another?

A. No. Except for the interview itself.

Q. Okay. So that allowed for the oral interview

Page 1111

very sarcastic. He had a smirk on his face, and it was just -- he never gave a reason for not promoting.

Q. At the time Mr. Harper made this statement, had you already -- was this after you had already seen him? I should say was it after you saw him remove Mr. Campbell's name from the recommended top three applicants?

A. Yes.

Q. Ms. Simpson, you were one of the plaintiffs in the lawsuit which Mr. Campbell was originally a part?

A. That is correct.

Q. When you brought your lawsuit, you were alleging race discrimination and retaliation against yourself?

A. Yes.

Q. And through your employment with the regional director's office, did you ever have occasion to observe anything -- excuse me -- anything that would indicate to you that there was a racial bias present in the hiring authority?

MS. FIELD: Objection; relevance, 403, hearsay.

THE COURT: Overruled.

Ms. Simpson, you need to limit that with what you saw yourself and heard yourself. Okay?

THE WITNESS: Yes, I did.

BY MR. FAZIO:

Q. What about with Tony Harper, anything he has done that

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would indicate he has a racial bias or discriminatory bias?

MS. FIELD: Same objection.

THE COURT: Same ruling.

THE WITNESS: There was a time when he referred to Carl Berry as that nigger downstairs.

BY MR. FAZIO:

Q. Carl Berry was the regional director?

A. Regional director, he made derogatory comments in my presence with regard to other black directors.

Q. What other derogatory comments did he make?

A. He called them dumb, he called two in particular, Marcella Dorum, assistant secretary in Tallahassee, he was black, and he called him dumb, and say he never heard an intelligent word come out of his.

Mouth, he referred to Theresa Baker as dumb, no brains. He hired her off the street. This was constant.

Q. Did you ever observe any other behavior toward Theresa Baker that you felt was discriminatory?

MS. FIELD: Same objection.

THE COURT: Same ruling.

THE WITNESS: Well, I knew that Theresa Baker was being, as senior supervisor at one of the probation parole office, she endured continued --

THE COURT: I want to come back to this again. Ms. Simpson, you must limit yourself to things you saw

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with your own eyes or heard with your ears. All right?

Let me hear the question again.

BY MR. FAZIO:

Q. Did you observe or hear anything with respect to Theresa Baker that you felt was discriminatory?

MS. FIELD: Same objection.

THE COURT: Same ruling.

THE WITNESS: Yes.

BY MR. FAZIO:

Q. And can you explain what that was?

THE COURT: These are comments made by Mr. Harper. You may answer the question.

THE WITNESS: Okay. Whenever she prepared reports directly, that she was responsible for, when I was present, Tony Harper would look for grammatical errors. He would say, look at this. He constantly made derogatory comments about Theresa Baker.

BY MR. FAZIO:

Q. Were there white personnel that fulfilled the same duties as Theresa Baker in the regional office?

A. Yes.

Q. Did you ever have occasion to observe whether Tony Harper scrutinized or made comments about the work of those personnel as well?

A. I never saw him make comments about the white

Page 1114

personnel.

Q. What about Joyce Haley, have you ever heard or observed anything that she has done to believe she had a racial bias or discriminatory bias?

MS. FIELD: Same objection.

THE COURT: Same ruling.

BY MR. FAZIO:

Q. Can you tell us about that?

A. One occasion when I was present she referred to an employee as a right old blacky.

Q. Who was she referring to?

A. At that time, Jimmy Nelson, director of community facilities, or assistant, and basically his duties at that time were to take Carl Berry to different offices, basically act like his chauffeur, and that to me is why she referred to him in that manner.

Q. Is Mr. Nelson white, or black?

A. White, he was white.

Q. If you can, explain your perception at the time why -- I will say it this way: Did it seem to be complimentary, or joking in any way?

A. It wasn't complimentary. My perception of it, something like the 1940's or '50's where perhaps blacks during that time were more subservient, I don't know, something derogatory in a racial, derogatory manner.

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Q. To see if I understand what you are saying, you are saying Joyce Haley was referring to Mr. Nelson, who was at the time the person that drove Mr. Berry around to appointments and things?

A. Exactly. He took him to the different offices for visits, to the various prisons, they went to lunch. He basically catered to whatever transportation needs he had. That was part of his duties.

Q. That is what Ms. Berry was referring to when she said he was acting --

THE COURT: Rephrase your question, that is what Ms. Berry...

BY MR. FAZIO:

Q. I am sorry, that is what Ms. Harper -- Haley, that is what Joyce Haley was referring to when she spoke about Mr. Nelson?

MS. FIELD: Objection; speculative.

THE COURT: Sustained.

BY MR. FAZIO:

Q. Can you explain the conversation what Joyce Haley said and --

THE COURT: No. Break it up, one question at a time.

BY MR. FAZIO:

Q. Can you explain the context of the conversation she

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had at the time, or saying at the time?

A. The context was she was upset that Jimmy Nelson was that attentive to Carl Berry's needs in that regard, and she just felt that he was too attentive, catering to him too much.

Q. And that is when she made the comment that he is behaving like a right old blacky?

A. Yes.

Q. In your conversation with Joyce Haley, did you observe her relationship with Carl Berry?

A. Yes.

Q. Did you have any observation as to whether she supported or was loyal to Carl Berry when he was her regional director?

MS. FIELD: Objection; vague.

THE COURT: Overruled.

THE WITNESS: She definitely wasn't loyal. She didn't support him.

BY MR. FAZIO:

Q. And why do you say that?

THE COURT: Could I stop you for a second? And just again to help us out, we heard some of this testimony, but, Ms. Simpson, can you explain the employment positions?

Mr. Berry held what job as opposed to Ms. Haley?

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THE WITNESS: Mr. Berry was the regional director, Joyce Haley was the director of community corrections and reported to Carl Berry. Carl Berry was her immediate supervisor.

THE COURT: Thank you. Let me go back to Mr. Fazio.

BY MR. FAZIO:

Q. What was it that Joyce Haley said to you that indicated to you that she didn't support Carl Berry?

MS. FIELD: Objection; hearsay.

THE COURT: Well, what was Mr. Barry's race?

THE WITNESS: Mr. Berry was black.

THE COURT: Okay. What is the legal objection.

MS. FIELD: Hearsay. May I elaborate, Your Honor?

THE COURT: No, thank you.

Based on that objection, I will overrule the objection, but, Ms. Simpson, you need to limit yourself now to opinions that you formed based on things you saw yourself or you heard yourself from Ms. Haley.

THE WITNESS: Okay.

THE COURT: Okay?

THE WITNESS: Yes.

BY MR. FAZIO:

Q. Okay.

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Could you go ahead and tell us what you saw or heard Joyce Haley do?

A. Well, Joyce Haley and her staff members, there were continuous anonymous letters being generated.

THE COURT: Is this something you saw Ms. Haley write a letter?

THE WITNESS: She was present when the letters were being prepared, yes. I didn't see her directly write the letter, no.

THE COURT: You need to limit yourself to things you saw yourself or you heard yourself. You may testify to that under oath, what you, yourself, saw or heard in terms of what Ms. Haley said and did.

BY MR. FAZIO:

Q. Ms. Simpson, if you can, address the judge's concerns.

THE COURT: No. Next question.

MR. FAZIO: That is what I was trying to do.

THE COURT: Next question.

MR. FAZIO: This is --

THE COURT: Ask a specific question what was said and done.

BY MR. FAZIO:

Q. Regarding the anonymous letters, can you explain the context of --

THE COURT: Before we get into that I want to

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think it was discrimination, I thought we needed to be more sensitive what we were doing and how we were doing it. We were supposed to be embracing a CQM of quality management. We were supposed to be embracing culture adversity, we were supposed to be making an effort to change the perception how things were being done.

And in my mind I thought this is what we were doing. In retrospect I should have kept my mouth shut and kept my stellar career and I would still be employed.

Q. When you say you went from a stellar career to being a troublemaker, can you tell us what it was that happened to you that changed your career after your involvement in this?

A. After I gave the -- made my statement to the Inspector General, soon after that a complaint was filed saying that I was harassing an employee. Actually, even though I presented all of the documentation where that person had not done what they needed to do, then it went to something else that I had done, and it led to me being -- they said they were flipping me with somebody else who was having problems. Actually, it was me.

Q. Would you explain to the jury?

A. I was moved from one office -- I am sorry, I apologize. I was moved from one office to another office to manage, and I was there for almost a year. And after

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that, after that time I went out on medical leave, and when I came back -- actually the day before I was going out that is when they came and said they were demoting me, during my medical leave. I felt so strongly I did not do anything wrong, I filed a grievance hearing and came back while I was on medical leave to defend myself.

And even though it didn't -- the PERC hearing did not go in my favor, I thought, okay, I am going to take this, let me keep moving, things happen.

But then when I came back, it was one thing after another. First being asked to sign the affidavit, and then there were other issues, and finally I decided enough, I am not going to be harassed to death, this is not that important, I will survive, and I resigned from my job without a job.

Q. While you were still employed with the Department, or during your employment, based on your experience with the panels that you had, I guess participated in, did you ever develop an understanding as to whether the oral interview was required for an employee to be even considered for a promotion?

A. No. It was my understanding so long as they applied, if they wanted to waive the oral part and be evaluated based on the other methods and criteria selection, that that could happen.

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Q. Did you ever receive a promotion at DOC without giving -- without doing an oral interview?

A. Yes.

Q. And were you aware of other employees that had received promotions without doing an oral interview?

A. Yes.

Q. Going to --

A. I need to correct that. Yes, according to them. I can only say what happened to me. Yes, according to them.

Q. Going to the complaint with the OIG -- I am sorry, investigation that was conducted by OIG where they questioned you, are you aware of how OIG, Office of the Inspector General, how they found out you were the one who brought the information forward about the five students complaining?

MS. FIELD: Objection; speculative.

THE COURT: You may answer that if they told you, if someone with your own ears said this is how we know you were the person who initially brought that to someone's attention. You can answer that.

THE WITNESS: No, I don't know. I don't know from my own ears.

THE COURT: Okay. Let's stop at that, and let's go ahead.

BY MR. FAZIO:

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Q. Ms. Tunnage, did you ever prepare an affidavit for Donald Campbell in connection with this lawsuit?

A. Yes.

MS. FIELD: Objection; relevance.

THE COURT: What is the relevancy of this?

MR. FAZIO: Goes into issues about the discriminatory bias, the selection process.

THE COURT: I am going to sustain the objection.

BY MR. FAZIO:

Q. Ms. Tunnage, when you were flipped, as you stated, do you know who was the one who made the decision to flip you out of that office to another office?

A. I don't know who made the ultimate decision. I know that Mr. Davis is the one who came over and indicated that I was being moved, but he never discussed with me who made the decision. I imagine -- I can only guess. I won't do that, I don't know.

Q. Do you know who -- at the time if Mr. Davis had the authority to do that on his own without getting approval from someone else?

A. No, sir, he did not.

Q. Did you have any deterioration of your relationship with Mr. Davis that you believe led to him choosing to remove you from his office?

A. No. I was still under his supervision when I was

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sorry, I don't recollect.

THE COURT: Let me stop you for a minute, ma'am.

Do you know whether you found Mr. Campbell's application for that particular position, are you able to tell us that today?

THE WITNESS: 10785, I don't think so. I am not quite sure. I know –

THE COURT: For our purposes here in the trial, we have been calling that the Strach position, and I don't know if that is of any help to you. And the other designation is the number, and it was 10785.

Either of those things, do they help you on that?

THE WITNESS: I don't think we were able to find Mr. Campbell's application for 10785.

BY MR. FAZIO:

Q. If you look at this document, Plaintiff's 19, already admitted into evidence, that is a copy of Donald Campbell's application for position 23894, which is the Payton application. We were provided that by Defendant. Does that refresh your recollection which position it was you couldn't find?

A. I think so.

Q. Maybe I can ask it this way.

Were you told that we are looking for applications for these specific positions from 1996, even

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though you may not remember which number is which?

A. Yes.

Q. There were two specific positions for which he applied in '96?

A. Yes.

Q. You were able to find one of them, but not the other?

A. Yes.

Q. Didn't you tell Ms. Harsma that the – one of the files contained no applications for that position?

A. Yes.

Q. And that those files had been destroyed?

A. Purged.

Q. Purged?

A. Right.

Q. Do you have knowledge as to the purging of those files?

A. You mean do I recollect purging those files?

Q. Do you have personal knowledge as to those files being purged?

A. Well, yes, I believe I would, because we do purge, as a matter of fact, after two years. That is our retention procedure. After two years we do purge applications. And if that folder was two years old or older, we would have purged.

Q. Is that what your understanding is of the Department's

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records retention requirements?

A. Exactly.

Q. Isn't there an additional portion to that requirement?

A. What would that be? I'm sorry.

Q. Meaning if the records are determined as subject to or involved in litigation, they wouldn't be purged, they would be maintained until the litigation is resolved?

A. Yes.

Q. If you could for the court reporter, even though you know the answer, if you wait until I finish, and then give your answer.

So, do you have any personal knowledge as to the Department being notified that those positions, 23894 and 10785, were subject to an EEOC charge of discrimination that Mr. Campbell filed?

A. I do now.

Q. I'm not sure if you did answer this question. With regard to the applications for the Strach position, do you have personal knowledge as to the purging of those applications?

A. I would say – it is very difficult for me to say do I have the personal knowledge as if I would remember purging that particular file. I can't remember actually purging that particular file.

Q. Okay. I'm only asking you if you know, or if you saw

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it done or was told by a manager that it was done.

A. But we purge as a matter of fact That would have been one of so many being purged. There would be no reason for me saying, yes, I personally remember or recollect doing that or seeing somebody doing that. It wouldn't have had any meaning. It wouldn't be something I was saying we have to think about. We purge every two years or when a file becomes two years or older.

That file would not have any – it would not stick out.

Q. Let me ask you this: If that was done as part of a regular purging process, why wouldn't the application for Mr. Payton's position be purged?

A. It would depend. Typically the way we did it was, we try to start from the highest or lowest number up. If one number were higher than the other, that might explain it.

Q. But as we sit here today, just to make sure, you don't have any personal knowledge how or why those applications were purged?

A. Why they would be purged would be because of retention, if they were two or more years.

Q. You don't have any personal knowledge how or why those particular documents were purged. What possible reasons could be, the actual reason how or why?

MS. FIELD: Objection; speculative, asked and

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answered.

THE COURT: Well, I think the question is, to the best of your memory, having told us about the general overall policy, do you have anything else to add to that that would be specific to these files?

THE WITNESS: No.

THE COURT: Okay.

BY MR. FAZIO:

Q. That is all I want to make sure. Other than your speculation of what could have happened, you don't know what did happen for a fact to those files?

A. No

Q. What about Mr. Campbell's application for the Payton position, were you able to find that upon your search?

A. I remember there were two that I pulled in tandem. One of them did not have application, so that would have had to have been purged. The other one did have applications. And if that was the one, yes, Mr. Campbell's application was among them.

Q. When you say you pulled them, where did you go? What particular file did you pull them from?

A. We have a file room where we keep our position folders. I would have gone to the file room and looked it up numerically, and taken it from the drawer.

Q. Do you have an understanding that those applications

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would only be kept in the position folders?

A. Yes.

Q. Do you know any reason or any exception to that policy that would explain how Mr. Campbell was able to locate Mr. Payton's application for that position in Mr. Payton's personnel file?

A. Did Mr. Payton -- was he appointed to the position we are talking about?

Q. Yes, he was.

A. Then that is how that would happen.

Q. So that would be the only way those -- the application would be in the personnel file is if the person was appointed to the position?

A. Yes.

Q. We went through this with Ms. Harsma yesterday. I won't go through all of it with you.

We looked in Mr. Payton's personnel file and we found two or three applications that Mr. Payton didn't receive. Yet those applications were right there, I say applications, for promotions that he didn't receive. Could you explain why those would be in there if you say they would only be there when he received the promotion?

A. To my knowledge, when a person received a promotion, or inter-level position, information was given to payroll and they filed it. I couldn't say why it would be in

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there.

Q. Okay. Did you look for Mr. Campbell's application for position number 9002527

A. Would you tell me what position that would be?

Q. It is a position for a correctional services administrator. And I could refresh your recollection, if you like. This is admitted into evidence as Defendant's 80-R, Career Service Announcement for that position, and says the run date is October 14, 1999; does that refresh your recollection?

A. Yes.

Q. Do you recall looking for Mr. Campbell's application for that position?

A. Yes.

Q. Were you able to find that application?

A. Yes.

Q. You were?

A. I'm sorry, we were able to find the folder.

Q. What do you mean the folder?

A. The position folder.

Q. And was Mr. Campbell's application in the position folder?

A. Tammy was looking for it. I was helping her locate it. When we found it, she picked it up and walked off with it. So I visually didn't see what was contained in the

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folder.

Q. When you say she picked it up and walked off with it, you are meaning what?

A. The folder with the materials in it.

Q. Did Tammy tell you if she found the application for Mr. Campbell?

A. No. I don't believe so. I don't believe she told me.

Q. In November 2000 when you filled out -- I'm sorry -- when you signed that affidavit, I don't know if you might recall this because there was a different number involved, do you recall looking for positions that were numbered as 35725, 35726, 727, and 728 that were submitted by Mr. Campbell February 24, '99?

MS. FIELD: Objection; relevance.

THE COURT: Let me hear that question again.

BY MR. FAZIO:

Q. I'm asking if you recall looking for -- at the service center looking for data or payment records that showed employment application for Donald Campbell for positions 35725, and in sequence up to 35728, on or around February 24, '99.

MS. FIELD: Relevance.

THE COURT: I'm missing something. What is the relevance to that? Does that tie to any of these?

MR. FAZIO: I'm trying to refresh her

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A. Yes.
Q. To your knowledge, was there ever an investigation conducted on that?
A. Yes, there was.
Q. Do you think given the allegation there should have been an investigation conducted on that?
A. Yes.
Q. Did you cooperate in the investigation?
A. Yes.
Q. Did Mr. Harper cooperate in the investigation?
A. Yes.
Q. What was the result of the investigation, to your knowledge?
A. The allegations were unfounded.
Q. Did that satisfy you that Mr. Harper did not make the comments or there wasn't sufficient evidence to suggest that he did?
A. Yes.
Q. Ms. Haley, during your tenure in your position at the regional office, have you had occasion to hear allegations made against you?
A. Yes.
Q. Do you understand that a lot of the allegations in this lawsuit are specifically directed to you?
A. Yes.

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Q. Are you mad?
A. No.
Q. Do you resent the fact that Donald Campbell exercises his legal rights because he subjectively thinks he was the subject of discrimination?
A. That's his right.
Q. How do you feel about Donald Campbell filing union grievances?
A. That is any employee's right.
Q. Have you ever told Donald Campbell that you in any way viewed that in a negative fashion or were mad about that?
A. No.
Q. Did you ever tell anyone that?
A. No.
Q. Did you ever hear Mr. Harper say he was mad or didn't appreciate the fact that Donald Campbell was filing union grievances?
A. No.
Q. Are you aware that Mr. Campbell has filed three EEOC complaints in the administrative arena?
A. I am aware that he has filed. I don't know the count.
Q. Did that make you mad?
A. No.
Q. Do you feel the same way about EEOC charges, what you just testified?

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A. Yes.
Q. Has Tony Harper ever indicated to you in your presence he has any negative feelings about Mr. Campbell filing EEOC charges?
A. No.
Q. Do you understand in this lawsuit he was denied five instances of failure to promote because of retaliatory motive taken out against him because he exercised his legal rights?
A. I am not sure I follow, am I aware.
THE COURT: The question is, are you aware of the contentions or allegations?
THE WITNESS: Yes. I am aware of that.
BY MS. FIELD:
Q. Was Donald Campbell ever denied a promotion because he engaged in what is called statutorily protected activity, that is, he filed a EEOC complaint in this lawsuit?
A. No.
Q. Did you ever direct anybody in the department to take any kind of adverse employment action against Mr. Campbell for any illegitimate purpose?
A. No.
Q. Do you, yourself, feel retaliatory when you take actions that pertain to Mr. Campbell or his chain of command?

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A. No.
MR. FAZIO: Objection, Your Honor, leading.
THE COURT: I don't the think that suggested the answer. I will permit that.
BY MS. FIELD:
Q. Have you ever discussed with anyone in your chain of command, or anyone else in the department, the fact that Mr. Campbell filed an EEOC charge in a lawsuit and I want to make it rough on him or in any way more difficult for him to conduct his duties as a CPO2?
A. No.
Q. Has it ever been reported to you that Mr. Campbell's co-workers have stopped talking to him or anything?
A. No.
Q. Has it ever been reported to you that Mr. Campbell's supervisors don't talk to him?
A. No.
Q. Have you ever observed any department employees avoiding or not talking to Mr. Campbell?
A. No.
Q. Ms. Haley, have you ever heard the term -- I am not sure I heard this right -- right old blacky.
A. Excuse me?
Q. Anything like that, right old blacky?
A. No.